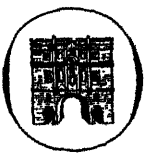
THE ECONOMIC AND SOCIAL FOUNDATIONS OF EUROPEAN CIVILIZATION

THE ECONOMIC AND SOCIAL FOUNDATIONS OF EUROPEAN CIVILIZATION

By

ALFONS DOPSCH



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INTRODUCTION TO THE ENGLISH EDITION

This book is a translation in a somewhat shortened form of the second edition of my German work, *Die wirtschaftlichen und sozialen Grundlagen der Europäischen Kulturentwicklung*, which was published in Vienna in 1923–4.

Cuts have been made first in the sections concerned with the older historical theories of the problems here dealt with, and secondly in the discussion of opposing theses and of the material yielded by research. In many places, also, the investigation into the origin of place-names and the examples put forward in illustration have been considerably shortened. Certain passages referring more particularly to England have been omitted, since a more detailed presentation of this material can be found in the works of English scholars, while in this English edition of my book stress is laid rather upon conditions prevailing on the Continent. The reader desirous of a fuller exposition than is given in these abbreviated sections, may refer to the footnotes indicating the corresponding passages in the German edition.

I should consider it a great honour if by means of this translation the results of my historical research may be spread throughout the English-speaking world.

My special thanks are due, above all, to Professor Eileen Power, who is the instigator of this translation, and who has throughout given her expert advice and support to the undertaking. Then I would extend my very warm thanks to the translators themselves, Miss M. G. Beard and Mrs. Nadine Marshall, and to the publisher for the pleasing appearance of the book. To my colleague, Professor Erna Patzelt, I am once again most deeply indebted for the difficult task she has fulfilled in shortening the German edition—a task which demanded not only the greatest familiarity with the subject-matter, but also a sympathetic understanding of the whole conception of the work. Finally particular thanks are due to Miss Richenda Payne, who has performed the arduous work of checking footnotes and seeing the book through the press.

ALFONS DOPSCH.

VIENNA.
January, 1937.

KEY TO ABBREVIATIONS USED IN THE FOOTNOTES

AA.	Auctores Antiquissimi.
Abhandl.	Abhandlungen.
Altert.	Altertümer.
Ann.	Annalen
Beit.	Beiträge.
Bll. Bl. (bl.)	Blätter.
DAK.	Deutsche Altertumskunde.
DRG.	Deutsche Reichsgeschichte.
DWG.	Deutsche Wirtschaftsgeschichte.
Epp.	Epistolae.
Ges.	Gesellschaft.
Gesch.	Geschichte.
Jb., Jhb.	Jahrbuch.
kde.	kunde.
KG.	Kirchengeschichte.
Korr. Bl.	Korrespondenz Blatt.
l.c.	loco citato.
LL.	Leges.
MA.	Mittelalter.
MG.	Monumenta Germaniae.
MG.D.	Mon. Germ. Dipl.
Mitt. d. Instit. (M.I.O.G.)	Mitteilungen des Instituts für österreichische Geschichtsforschung.
N.	Neue.
NA.	"Neues Archiv."
NF.	Neue Folge.
ob.	ober.
RA., Ra.	Rechtsaltertümer.
Reg. Imp.	Regesta Imperii.
RG.	Rechtsgeschichte.
SB., Sitz-Ber.	Sitzungsberichte.

UB.	Urkundenbuch.
U.B. d. L. o. d. Enns. .	Urkundenbuch des Landes ob der Enns (=ober-öst. UB.).
vaterl. . . .	vaterländisch.
Ver.	Verein.
VG.	Verfassungsgeschichte.
Vjschr.	Vierteljahrschrift.
Westd.	Westdeutsche.
Zeitschr. d. D. u. Ö. A-V.	Zeitschrift des Deutschen und Österreichischen Alpenvereins.
Zeitschr. f. SOZ. und WG.	Zeitschrift für Sozial- und Wirtschaftsgeschichte.

ERRATA

For "Aryans, Aryanism" read "Arians, Arianism" throughout.

THE ECONOMIC AND SOCIAL FOUNDATIONS OF EUROPEAN CIVILIZATION

CHAPTER I

THE INFLUENCE OF CONTEMPORARY MOVEMENTS ON HISTORICAL RESEARCH

THE relationship of the Germans to the Romans and their civilization at the beginning of the so-called Middle Ages is one of the oldest of historical problems, and one upon which, as long as a science of history has existed, historians have been obliged to adopt a definite position. But, however much their opinions may have differed in detail, one fundamental idea has persisted, and in spite of occasional challenges still maintains its sway even in the most recent works of historical research. That fundamental idea is the conception of the German Barbarians as a people without culture, enemies of civilization, who fell upon the old world and brought about its ruin and destruction. It is usually assumed that a sharp opposition existed between the Roman administration as it then existed and the embryonic political development of the newcomers, and it is this hostility which is held to have caused the downfall of Antiquity, together with the pillage of most of its countless treasures. In many books it is suggested that this amazing period of destruction in world history was of short duration, and was brought about by the great migrations or *Völkerwanderung*, which were sometimes even thought to have occupied no more than a century (approximately from A.D. 350–450). At best this great transition from Romanism to Germanism was described as if, without any intermediate stage, the "barbaric" Germans had appeared side by side with ancient civilization at its height and had only gradually assimilated some elements of its culture through the expansion of the Roman Church. Even Karl Lamprecht took this view. "Thus," he wrote in 1898, "the land had a dual appearance. Side by side with the subtle luxury of the Roman officer and merchant there appeared the pitiably uncivilized native barbarians; there was no harmonious mingling of the two." [1]

Although D. Schäfer attributes the rise of European civilization to the usual sources—Roman Empire, Christian religion, and German national characteristics [2]—he, too, considers that "a development on a new basis" began with the German states in the fifth century, and that a new world then appeared in place of the Græco-Roman one. "It was unavoidable that some details should be adopted from the Romans," [3] but the medieval state was nevertheless "a German invention, for a long time clumsy, and not to be compared in the extent of its influence, either external or internal, with the gigantic organization of the Roman Empire. But from the ruins a new seed germinated." The

[1] Lamprecht, *Deutsche Geschichte*, i, 225.
[2] Schäfer, *Deutsche Geschichte*, i, Mittelalter. 4th edit., 1914, 67.
[3] Ibid., 71 f.

independence of the German spirit seemed to him unquestionable. He thought that the foundations of human society were quickly relaid to suit the German temperament and were capable of development, but that the gains of antiquity disappeared and were for centuries almost forgotten.[1] Therefore Schäfer, too, speaks of a "retrograde step", a "destruction of Roman culture by the barbarians".

How did this fundamental theory concerning the origin of European culture come to be held? It grew up, in my opinion, with the great intellectual movement which set in in the middle of the fifteenth century, and is easily comprehensible if we remember this historical origin. The renaissance of classical antiquity involuntarily gave rise to a particular attitude of mind in Italy on the subject of the important problem of the German conquest of Rome. The more the ancient world was studied and admired by scholars, the more strongly did they feel its downfall as a national misfortune. The marvellous picture of that perfect culture, painted by the fancy of its admirers, makes it easily comprehensible that the conquerors of the Roman Empire should have seemed mere rough and violent savages, all the more so because the picture was based not on conditions during the period of conquest (the fifth century A.D.) but on those of the golden age of Roman art and literature. Cæsar and Tacitus were read and their term *barbari* was adopted, but with quite a different meaning from that which it had held for their contemporaries. From the point of view of the Renaissance Humanists, the Germans, who were outside the great civilization of Rome, were the enemies and destroyers of civilization, neither did the Humanists observe how completely they were giving the lie to their own authorities, nor how strongly this view conflicted with that held by the Roman authors. For Tacitus, with his high ethical evaluation and even admiration of those "barbarians", was contrasting German customs with the degeneration of Roman administration and the striking decline of ancient culture, and drawing an implicit moral.

The more splendid the works of art which were discovered by the newly-awakened interest in antiquity, the more hostile to civilization did the German conquerors seem. The highly sensitive imagination of these Southerners, whose enthusiasm so quickly leads to ecstatic exaggeration, could visualize that transition from classical to Germanic rule only in the light of a catastrophe, the violent shattering of a Roman world, which was believed to have remained untouched until that time; for they had no conception of the process of historic continuity. Upon the Germans, or the Goths, as the Italian Humanists called them, was placed the main responsibility for the downfall of the Roman world. To the neo-classical artists of the Renaissance, everything that lay between them and their admired models seemed "Gothic barbarism", an attitude which was, perhaps, most harshly expressed by Filaretes, crying in 1450: "Cursed be the man who invented this wretched Gothic architecture; only a Barbarian people could have brought it to Italy."[2]

Italian Humanism, then, crossed the Alps and created in Northern Europe also an enthusiasm for classical culture. It is true that a national opposition against the extreme Italian position soon made itself felt, especially in Germany, and led to active research into the German past.[3] But it must not be forgotten

[1] Ibid., 72. [2] See C. Neumann, *Byzantinische Kultur und Renaissancekultur* (1903), 37.
[3] See Joachimsen, *Geschichtsauffassung und Geschichtsschreibung in Deutschland unter dem Einfluss des Humanismus; (Beiträge zur Kulturgeschichte des Mittelalters und der Renaissance)*, ed. Walter Goetz, vi, 76 ff.

that German Humanists, too, believed the fall of the Roman Empire to have been a calamity and held the Germans responsible for it. Even men like Beatus Rhenanus, who was perhaps the first to approach a better understanding of the relationship of Germans and Romans, lament bitterly over the destruction of the much admired Empire. To him, also, the Germans are pillagers, barbarians in the modern sense of the word, i.e. savages. He does, it is true, praise as a valuable possession the high degree of freedom they had cultivated; but he regards even the Franks as being primarily destroyers, who devastated the towns and enslaved the Roman provinces which they had conquered, as the Huns of Attila had done before them.[1] The German Humanists had too great a respect and admiration for classical antiquity, and the sources from which they drew were too biased, for them to be able to understand the real and independent part played by German culture in the development of the new states of the early Middle Ages.

This Humanistic theory of the past held sway for a long time. It was the fundamental hypothesis on which subsequent theories were always built, and its continued existence was due to the peculiar line taken by later historical research, especially in the history of culture (*Kulturgeschichte*). For although the seventeenth century brought with it a great advance in historical knowledge in Germany, this advance was made in a different direction. The great motive forces of German political organization, territorialism, and princely despotism, also influenced historical interpretation and research,[2] and although, when the period of the creation of great new states began, historians once again turned to more general subjects, by this time the French Era of Enlightenment in the eighteenth century had imparted fresh life to the catastrophic theory of the humanists. Count Boulainvilliers put a very low estimate on Frankish culture, for he started from the political preconception that the French nobility descended from the Frankish conquerors of Gaul, whereas the conquered Romans formed the subject class; according to this view the Franks were nomads without fixed property in land, which they developed only after the subjection of the Romans by Clovis.[3] It was of little use that the learned Abbé Dubois attacked this view, holding that there was peaceful co-operation between Germans and Romans and asserting that the Germans came not as conquerors but as associates of the Romans, leaving the Roman system unchanged, and that the servitude of Gaul was first brought about in the ninth century by the rise of the nobility.[4] Montesquieu and Voltaire, who has been regarded—not quite correctly—as the founder of the history of culture, have on the whole the same Romanophil, or, rather, Germanophobe standpoint as the Humanists. Both Frenchmen were inspired by an extraordinary admiration for the Greeks and Romans. Voltaire, indeed, called them the two most gifted nations of the world,[5] and Montesquieu devoted a special work to the greatness of the Romans and its cause.[6] According to them the Roman empire became the prey of the barbarians, whose invasions caused general misery.[7] The destruction of a flourishing trade is, for Montesquieu, only one aspect of these melancholy negative influences, though as a writer

[1] Ibid., 140.

[2] See in general F. Wegele, *Geschichte der Deutschen Historiographie*, 342, where, however, the connecting links are not sufficiently worked out or understood.

[3] *Histoire de l'ancien gouvernement de la France* (1737) and *État de la France* (1737).

[4] *Histoire critique de l'établissement de la monarchie française dans les Gaules* (1734).

[5] *La philosophie de l'histoire* (1765), chap. lii.

[6] *Considérations sur les causes de la grandeur des Romains et de leur décadence* (1734).

[7] Montesquieu, *L'esprit des lois* (1748), xxi, 17.

in the age of mercantilism he felt it nearest to his heart. His line of argument should be noticed. He gives a detailed description of the peculiar talent of the Romans for trade, their far-reaching commercial connections, and above all their encouragement of urban life. This trade, he thinks, was for the barbarians a mere object of plunder. "Soon there was no more trade in Europe!"

Compare with this Voltaire's picture of the transition from the Roman to the German world, in his *Essai sur les mœurs et l'esprit des nations*.[1] "If we pass from the history of the Roman Empire to that of the peoples who destroyed it in the West, we feel like travellers who leave a splendid city to find themselves in a thorny waste. Twenty barbaric dialects are the heirs of the beautiful Latin language, which was spoken from Illyria to the Atlas mountains. Whereas, up to that time, wise laws had ruled over half our hemisphere, now there are only savage customs. All the signs of civilization, amphitheatres, circuses, and the rest, which were erected throughout the provinces, are destroyed and lie in ruins, overgrown by grass. The excellent roads, which had led from the capital itself to the distant Taurus, are covered by stagnant pools." He sees the same upheaval in the sphere of intellectual culture. The whole of Europe fell into this shameful barbarism, and for long remained submerged; in Voltaire's opinion it did not recover until the sixteenth century. The Middle Ages are for him centuries of barbarism, horror, and superstition, of senseless tales of wonder—a monstrous negation of all civilization.

Not only do we find this supposed destruction of ancient culture playing an important part in later theories, but the positive interpretation given to internal German conditions was also influenced by these French writers, and especially by Montesquieu. It is he who is responsible for the view that the German tribes lived in forests and marshes, partly separated from one another by lakes.[2] Nay more, these conditions lasted, in his opinion, for a long time; the barbarians kept their habits and customs even after the conquest. They had little agriculture, but lived a pastoral life, and they had no industries. The general result of the conquest was to turn freemen into serfs. Great estates, particularly ecclesiastical estates, were now formed. Industry was carried on by serfs.[3] For Montesquieu the age of Charles the Great was merely an imitation of the Roman empire; after it, further disorders and wars brought about a relapse into that state of illiterate ignorance which Charles, by returning to Roman methods, had for a brief moment alleviated.

Here already we have, in its essential features, the unaltered and permanent basis, which was simply taken for granted in all later conceptions of this early period. It is interesting to note its further development by Guizot in France, at the beginning of the nineteenth century. The influence of Montesquieu is obvious; Guizot edited the Abbé Mably's work, *Observations sur l'histoire de France*, to which Montesquieu had already frequently referred.[4] Guizot holds the catastrophic theory of Voltaire and Montesquieu, and we find almost the same description of a highly developed civilization, vigorous trade, wealth, and a splendid way of living destroyed and completely swept away by the barbarian invasions.[5] Never have human beings had more evils to bear or more sorrows to endure. The treatment of the problem of the fall of the Roman Empire is

[1] At the end of the twelfth chapter.
[2] Op. cit., xxviii, 2.
[3] Ibid., xxx, 6, 11, 12.
[4] Ibid., xxviii, 11.
[5] *Essais sur l'histoire de France* 1823, 3 and 53 ff.

significant. Guizot lays special stress on the fact that in the war with the barbarians no resistance on the part of the Roman nation can be traced, that indeed it seems to be entirely lacking; and this he considers to be one of the most surprising facts in history.[1] His important observation as to the silence of contemporary documents on this point did not, however, lead him on to take the next logical step and to doubt the correctness of his fundamental thesis; he was so sure that it was true.[2] He could only find an indirect answer to his question as to how this surprising silence was to be explained, and (in accordance with the sentiments of his time) he made imperial despotism responsible for the apathy of the people and their demoralization. A biased and truly characteristic method of writing the history of culture! He was unable to correct his general theory by a detailed examination of conditions, but attempted by devious subterfuges to reconcile his thesis with the catastrophic theory, which remained unchallenged and intact, although the contradictions embodied in it had already been shown up by the sources and were well known.

Beside this catastrophic theory, which is essentially of Romance origin, another and quite independent theory, starting from a different angle, had meanwhile found expression in Germany. It began by considering existing conditions, and tried to explain the past by the present. This was not accidental, for its originator was a man of practical experience, a lawyer taking an active part in public administration, who stood for the improvement of the economic and social conditions of his homeland. This man was Justus Möser of Osnabrück. In attempting to find historical foundations for his proposed reforms, he was led to link the present with the past. The basis of his work is to be found in the conditions prevailing in his own country, Westphalia, especially in the bishopric of Münster, which he considered particularly appropriate for an investigation of primitive forms of organization. Möser actually thought that the agrarian system of his own day was "still like that of the earliest times".[3] Like the French, he went back to Cæsar and Tacitus, seeking analogies for comparison with the present, but his practical experience in administrative technique enabled him to criticize them from an independent point of view, and he rejected Cæsar's description of the German agrarian system, since it did not correspond to Westphalian conditions. By so doing he made an important step forward in our knowledge of social and cultural history. His inductive reasoning from nature led him to a bold attack on the accepted authority of historical tradition. The practical expert attaches more importance to natural conditions of the soil than to descriptions of classical authors. Möser realized that Cæsar's descriptions could not have a general application, but were due to conditions of war, and consequently gave logical preference to the condition of his own part of the country, which was little affected by great political upheavals, least of all by wars. Thus he declared that the Westphalian isolated homesteads (*Einzelhöfe*) were the original form of settlement, and considered the *house* of fundamental importance.

Möser's views were determined by a second main influence. He was writing in the time of the peasant liberation and was politically active on its behalf. He

[1] Op. cit., 1 f.

[2] He considers that the age of Clovis was still one of chaos: "où l'on ne rencontre guère, que la lutte des forces et des indépendances individuelles." Ibid., 65.

[3] *Osnabrückische Geschichte* (2nd edit., 1780), i, 10.

was personally convinced that his age was especially favourable to liberty,[1] and he wrote the history of his country [2] as a good German patriot. The ideal of freedom plays a large part in it. Möser hoped to bring about a change in the interpretation of German history by showing that ordinary landowners were the true components of the nation and were therefore to be regarded as the proper subject of historical investigation. The earliest period seemed to him to be of the first importance, and he saw in it a "golden" age of free German farmers, associated with each other for purposes of self-government under an elected magistrate. This first period of "high and universal honour" lasted, according to Möser, till the time of Charles the Great; but it must be noted that he looked on this golden freedom as a survival from antiquity.[3]

Since Möser considers the separate homestead as the original form of settlement, he begins with private ownership. "Each homestead was, as it were, an independent state, which stood apart from its neighbour in peace or war." [4] But his Münster home caused him to adopt a second theory which suited conditions there. The isolation of the individuals was consummated in a union, which again rose out of natural conditions. "It would seem that the common use of forest, pasture, moor, or mountain, where no one could fence off his own share, first united a few of these men in our part of the world. We call such common preserves Marks; and perhaps the earliest tribes who settled in isolated communities were members of a Mark-association (*Markgenossen*)." We must observe, however, what he means by these Marks. "Our whole diocese is divided into Marks, in which villages and separate dwellings lie scattered, and their boundaries do not coincide with any other boundaries, whether of district, local government, jurisdiction, parish, or hamlet. Nature and necessity alone seem to have directed the division, and we may therefore conclude that the boundary of the Mark is older than any other." [5] Common usage extends only to those pieces of land which are economically unsuitable for private property, or which may be more useful from an economic point of view if left undivided.

Möser may to-day be regarded as one of the founders of German economic history. For although Anton's later work on the history of German rural economy (*Geschichte der Deutschen Landwirtschaft*) was much more correct in some of its details, it was the fundamental views of Möser, and not those of Anton, which were adopted by later scholars. Möser's views were chiefly influential because they became the basis of German legal history. K. D. Hüllman, in his book on the origin of classes in Germany (1806), which was planned on a large scale, was the first to work out a formal system, which made him appear as the father of the so-called "manorial theory". In this study he uses many of the arguments of the Westphalian patriot. He describes the German national states on Roman soil as composed of settled peasant-farmers. According to him, their public constitution is a larger and more splendid imitation of the internal organization of the great homestead of the time.[6] The lord is the lawgiver and judge of his tenants, who perform agricultural and military services. "A mere aggregate of landed properties and of isolated farmsteads, each of the

[1] *Patriotische Phantasien*, iv, 321.
[2] See the preface to the *Osnabrückischen Geschichte* (1768).
[3] Ibid. "This golden age continued to a considerable extent . . . under Charles the Great. But Charles was only the head on that ancient body."
[4] Ibid., i, 11. [5] Ibid., i, 13.
[6] *Geschichte des Ursprunges der Stände in Deutschland*, i, 13 ff.

little kingdoms was little more than a great estate with many independent farms. The richest and therefore the most respected landowner was the head of the confederated landowners; he took the command in national wars, had chief place in national councils, and superintended the autonomous jurisdiction of the citizens of the state. Copy and original differed only in the fact that in the former the members of the community were settled on their own lands and were fully free, but in the latter they were on their ruler's land and were thus really not free." It will be seen that in spite of differences the fundamental ideas of Möser's theory are adopted here; free settlers in isolated homesteads forming as it were the nucleus of the state, and at the same time ruling it by virtue of their autonomy.

Then came a further development of Möser's Mark theory, in a form identical with that which he himself had introduced. This is found in K. F. Eichhorn's *Deutsche Staats- und Rechtsgeschichte*. In the first edition of this work (1808) the Mark-association still plays only a modest part and is again considered to be merely a form of unification, binding together privately-owned and isolated settlements.[1] Eichhorn expressly rejected the idea of common ownership of inherited or of landed properties[2], and only allowed co-ownership.[3] He described the former as an unfounded hypothesis, which was unnecessary to explain the limitations on the right of disposal of property, apparently so disadvantageous to the heirs. He remarks that in any case these limitations may have originated for the most part in the following period, and therefore does not regard them as a survival from primitive times. It is true that later Eichhorn's own researches led him to another conclusion, but it should be noted how he arrived at these later views. In his famous thesis (*Über den Ursprung der städtischen Verfassung in Deutschland*) (1815), Möser is still clearly his starting-point[4]; moreover he refers expressly to Möser's works and follows him in taking for granted, as a "known and proven" fact, "that according to German ideas all law proceeded from the whole body of full citizens, by means of which they preserved their life, their honour, and their property."[5] The fundamental conception of the freedom and equality of the German peoples led Eichhorn at once to conclude, from the mention in Frankish documents of the eighth and ninth centuries of the right of the Mark to allot individual holdings (*Hufen*), that originally all Marks were divided into portions with equal rights, each held by several free owners.[6] Then, still clearly under Möser's influence, he formed the hypothesis that "the undivided Mark was owned in common by the inhabitants of the isolated homesteads (*Einzelhöfe*)", their rights of usage in it being decided by a "Mark-law", which "in accordance with the Germanic constitution" doubtless "grew up out of the decisions and decrees of all the Mark-associates".[7]

Thus legal constructions were used to build up a theory based upon comparatively late sources, despite the fact that in these sources the fundamental thesis of a free society of German land-owners no longer held good.[8] After

[1] 35 note *b*. [2] Ibid., 140. [3] Ibid., 148, note *c*.

[4] *Zeitschrift für geschichtliche Rechtswissenschaft*, i, 150: "Yet the term 'marca' is better suited to Low German colonization, where the separate farms of the peasants lie scattered in the Mark."

[5] Ibid., 172. [6] Op. cit., 156. [7] Ibid., 169.

[8] Eichhorn himself had to acknowledge that our documentary information about individual settlements goes back no farther than the eighth century, and that the condition of the villas in earlier times was not what it appears in Carolingian sources.

Eichhorn had abandoned his original view[1] and that of his master, Möser, and had developed a definite theory of Mark-law and Mark-association, he described it in the later editions of his *Deutsche Staats- und Rechtsgeschichte* as the actual "basis of the earliest constitution".[2] He spoke of a complete "Mark-system" which "in later times was either laid down by the Mark-associates by virtue of their common ownership, or granted by the lord of the Mark".[3] This began to assume an ever-increasing significance. Private property in arable land (in which Eichhorn formerly admitted that there was private ownership, and which he did not include in the Mark) now also appears as "subject to common use, and takes on the character of a right of *usufruct* regulated by the community". According to Eichhorn, this explains Cæsar's statement that there was no real private property in land among the Germans. Thus Möser's theory was further developed, and wider generalizations were made from statements which he had applied only to the narrower sphere of Westphalia. Eichhorn's reputation and the wide circulation of his book, which went through many editions and gradually became the standard history of German law, created more and more adherents of this theory in Germany. His Mark theory was destined to become the corner-stone of the whole constitutional and legal history of that country.

It is interesting to note Eichhorn's position with regard to the old catastrophic theory. Here his scientific mode of investigation, based on a study of the sources, appears in sharp contrast to the speculative tendency of the French. He stresses the obvious lack of definite information, and cautiously rejects as improbable the theory of a systematic re-organization of the conquered Roman provinces by the Germans. He emphasizes the conservatism of the German conquerors in respect of the earlier population and their legal system.[4] In later editions he went so far as to maintain "that neither their civil organization nor their customs show any trace of savagery or barbarism".[5] In general, however, he adhered from the beginning to the view that in the Roman provinces of the Frankish kingdom there was a fusion of Germans and Romans into a new nation.[6] This new people is described by Eichhorn as undergoing a rapid increase of barbarism[7]; the former Roman culture is lost and gives way to an unbridled degradation. At the same time, however, he stresses as the special German contribution to this new development, their warlike character, and the liberty shown in their customs and constitution. We have already seen the influence of this last idea in his account of the development of law.

This theory of Germanic freedom and of the participation of all freemen in the government, Möser's *gemeine Ehre*, which had its origin in the ardent aspirations of the eighteenth century, continued to recur as a *leitmotif* in all accounts of the earliest German period. On it K. A. Rogge based his study, *Über das Gerichtswesen der Germanen* (1820), in which he maintains that the free Germans wielded a completely unfettered authority, without recognition of any superior or ruler.[8] In other contemporary or later works on economic and legal history this conviction appears again and again.[9] It was regarded, so

[1] In the second edition, 1818, i, 44, he holds to the older theory and directly quotes Möser (p. 46), but on 232 f. his conversion to the new point of view is to some extent indicated.

[2] See for example 4th edit. (1834), 61, or 5th edit. (1843), 57.

[3] Ibid. (4th edit.), 63, or (5th edit.) 58. [4] Op. cit., 59 f. [5] (5th edit.), i, 57.

[6] i, 245, § 117 = i (5th edit.), 471. [7] i, 99, § 42. [8] 1 f.

[9] See, for example, Savigny, *Geschichte des römischen Rechtes im Mittelalter* (1815), 160; Kindlinger, *Geschichte der deutschen Hörigkeit* (1819), 9, etc.

to speak, as a German national inheritance, the more so since the conditions of the moment made such a state of affairs appear a goal most ardently desired. This is clearly seen in those German patriots of the Romantic period, whose enthusiastic nationalism brought about a lively interest in the history of the past.

We find an important counterpart to this pivotal conception in Guizot's work (already mentioned) of 1823. Here an impressive antithesis between the Romanist and the Germanist conception of history is revealed. Guizot, also, interprets the name Frank as "freeman"[1]; he, too, thinks that the free alod was to be found when land-ownership first began. Every warrior was master of the piece of land which he himself had taken or which fell to him by lot. There was free land-ownership as well as personal freedom, and the settled Frank was as little under obligations to the state as in the time when he was still a hunter and a warrior.[2] But from this Guizot goes on to give a picture of the social development of that early time which is quite different from that of the German scholars. He attacks those who see in freedom a general characteristic of any young society, and will allow that it was so only at the very earliest stage.[3] In his opinion it is found only in humble circumstances, among shepherds, hunters, or savage warriors; but it disappears as soon as there is growth and expansion into more complicated political and social relationships. And, according to Guizot, the German tribes were already in this position when they settled in the West Roman Empire.[4] The simple conditions of earlier times, when the Germans were still beyond the Rhine, had become more complicated and diverse. Freedom was no longer the chief social characteristic; side by side with the rich Roman estate-owner we find the poor Frank, who was merely a simple tenant-farmer. There is every sort of variety and mixture, but no uniformity of social and economic development. The free population recedes more and more[5]; free organization is limited to local administration.[6] But Guizot says nothing of a Mark-system; he saw no trace of it in contemporary sources, though he used them in detail. To him the new system seems to be one of territorial lordship, and it is interesting to note how he imagines this transition *in concreto*. In his opinion, the hordes of warriors did not at once break up after their successful raids, to live separately each with his family. That would soon have endangered the conquerors. The Franks did not like working themselves, but preferred to spend a social life in games and drinking. As a consequence of this, land was appropriated as a whole by the leaders of a horde, and their followers lived on their property; hence the numerous free tenants on the land of others, and the comparatively small number of real land-owners among the Franks.[7]

Guizot's work shows an unmistakable advance in the history of culture. It avoids mechanical imitation and tries to give a rational explanation of definite historical facts. Instead of proceeding from certain fundamental views, regarded almost as axiomatic, he takes the concrete historical phenomena as the basis of his theory, even though his description of developments thereby loses uniformity. But his historical acumen and correct knowledge had no lasting effect on later works. Even Augustin Thierry's *Considérations sur l'histoire de France*, a widely-read book, which succeeded in describing the Germanic occupation of Gaul

[1] Op. cit., 56.
[2] Ibid., 98.
[3] Ibid., 186.
[4] Ibid., 189 ff.
[5] Ibid., 236 ff.
[6] Ibid., 256 f.
[7] Ibid., 111.

much as recent historians have done, assumed that there was a far-reaching destruction and devastation of Northern France, which the Frankish conquerors invaded in greater numbers than the centre or the south, where they had less influence; and his description of the social reconstruction of that area resembled in its main lines the view of Count Boulainvilliers. Jakob Grimm, whose *Deutsche Rechtsalterthümer* had meanwhile appeared (1828), was also unable to accomplish much on this important point, since his position was not sufficiently sharply defined. He correctly emphasized the existence of divided and undivided property, the latter especially to be found in forests and pastures, and tried to limit the conception of the Mark to such land; yet at the same time he admitted that in certain cases it included arable land also, and that the Mark-community had a certain authority even over the house and arable property divided among its members. The undivided ownership seemed to him the more primitive, although he pointed out that German history gives very scanty indications of its existence, and that the by-laws (*Weistümer*) of the Mark were not written down till the Middle Ages were over.[1]

The theories which governed the history of culture during the succeeding period owed their special character to the fact that they were, on the whole, put forward mainly by lawyers. The part which Beseler played in this matter does not seem to have been sufficiently appreciated. He proceeded from the basis of German civil law. In his work *Die Lehre von den Erbverträgen* (1835), he first described death legacies according to early German law. He did not, as others had done, seek an economic explanation for these legacies with their peculiar limitations, by assuming a characteristically German communal ownership, but found instead a social explanation in the principle of association (*Genossenschaft*). The corporative motive seems to him the peculiar characteristic of Germanic life, throughout which a ramification of associations is to be observed.[2] Here Beseler is referring in particular to the Mark-associations, and the town and village communities. It is to be observed how dependent he is on the older theory; he also starts from the freedom of the Germans and assumes their equality. The people was responsible for its own laws, which were not the result of legislative action, but of free discussion among the members of an association, extended and fortified by agreement.[3]

This association theory was certainly, in the first place, the offspring of contemporary ideas about the freedom and equality of the early Germans, which Jakob Grimm also held in great honour. But it received a special impetus from the great public agitation for co-operation which began in the first half of the nineteenth century in Europe. Such democratic movements were greatly in its favour. In 1836 Weiske [4] described the Mark as the earliest type of settlement made by an association group in which, instead of all the land being divided up without exception, the uncultivated land or that less suitable for cultivation remained as the common property of the associates. Here, therefore, a situation which Möser considered to be the result of natural conditions or of agricultural technique, is already represented as the conscious expression of the will of the

[1] *Deutsche Rechtsalterthümer*, 495 ff., especially 501.

[2] Op. cit., i, 80.

[3] See his inaugural speech at Basel, 1836: "Über die Stellung des römischen Rechts zu dem nationalen Recht der germanischen Völker," 7.

[4] *Die Grundlagen der früheren Verfassung Teutschlands*, 5.

community. R. Zeuss in his famous work *Die Deutschen und ihre Nachbarstämme* (1837) interpreted Cæsar's well-known account of the Germans in the same way. "There is as yet no established or regulated land-ownership. The inhabitant is not attached to a definite portion of the land; there is undivided common ownership." [1]

Thus the fundamental observations which J. Möser had drawn from nature itself were re-shaped by legal arguments into a Mark-association theory, which was really something quite different. It is true that it was not entirely uncontradicted. "Möser's assumptions," said Jakob Grimm, "soared into a realm of uncertainty; and, dazzled by their rashness, none of his successors was able to imitate his great gift of observation." [2] For his own part he realizes that it is difficult to justify the overbold combination and comparison of distant periods of time. He realizes in particular the doubtful nature of Möser's use of sources,—passages from Tacitus, from the old laws, from medieval records, and from *Weistümer*, which were written perhaps only a century ago, all quoted in the same connection.[3] But not only was doubt awakened by the complete disregard of the rule that sources must be contemporary, which is one of the fundamental conditions of modern historical research, but the whole method of building a vast structure on the foundation of merely arbitrary theses was soon called in question. In 1842 Wilda attacked Rogge's conception of Germanic freedom and declared that his edifice of German political and legal administration hovered between heaven and earth.[4] He also attacked the historians who assumed that the German state arose in the beginning out of isolated settlements and homesteads, and that the Mark-association was the origin and central point of all German constitutional development. In opposition to this, Wilda emphasized the state, in which national and local communities took a subordinate place.[5] Already in Tacitus' earliest accounts of the Germans, although their agrarian system might indicate conditions still close to those of nomadic life, he sees the elements of a state, especially as regards subordination to the collective will.[6]

Two years later (1844) Heinrich von Sybel opposed the Mark theory still more emphatically. He follows Wilda and Weiske in pointing out the lack of all definite evidence for the existence of Marks and Gaus before the age of folk migrations [7]; and he realizes the contradiction between that theory and the accounts of Cæsar and Tacitus.[8] He also expresses doubts as to the retrospective method of investigation, which seeks to prove "an everlasting permanency in the apparently accidental" from German antiquity as a whole. "The Mark-judges of the Germans were aboriginals, like their temples and priests, their kings and gods." [9] v. Sybel rightly urged that development and change had taken place in the course of time, and he found support in the evidence of historical conditions, according to which this seemed "natural and necessary".[10] v. Sybel was undoubtedly right to emphasize the fact that "the germ of truth in these opposite views is not the civilization, but the capacity for civilization of our

[1] Op. cit., 52.
[2] *Deutsche Rechtsalterthümer*, Preface, p. vi.
[3] Ibid., p. viii.
[4] *Geschichte des deutschen Strafrechts*, i, 120.
[5] Ibid., 122.
[6] Ibid., 124.
[7] *Die Entstehung des deutschen Königthums*, 3.
[8] "If we look on the mark as the earliest German corporation, we must inevitably conclude that Cæsar's statements about German agriculture are to be doubted and the passages in Tacitus must be explained in some other way."
[9] Ibid., 4.
[10] Ibid., 5.

nation in its historical beginnings", and this happy statement gives his position also with regard to the catastrophic theory of the Romance peoples.

v. Sybel's demands that the gaps in our historical knowledge should be filled received an immediate answer from two directions. In the first place, a comprehensive account of the whole of early German constitutional history was undertaken by Lehuërou in 1843 in France[1], and by G. Waitz in 1844 in Germany.[2] As this necessitated further investigation of German sources, peculiar and local conditions were brought into larger groups and thus more correct standards were reached for the whole. Waitz, it should be observed, as a thorough student of his sources, declared that "the view according to which Mark associations were the basis of all political combination among the Germans, must be abandoned."[3] He complains in particular that although Möser had limited the scope of his theories to his own part of the country, an unhistorical generalization had been made from them.

In the second place, our knowledge of early economic and social development was considerably enriched by the publication and elucidation of great and important historical sources. Among the numerous commentaries on early German law two in particular should be mentioned, Pardessus' edition of the *Loi Salique* (1843) and Guérard's standard work, *Le polyptyque de l'abbé Irminon* (1844); the latter, in his publication of the estate-book of St. Germain des Prés (near Paris), took the opportunity of collecting early sources for economic history and making scientific use of them. In the same year (1844) Gaupp, in his still valuable work *Die germanischen Ansiedelungen und Landtheilungen in den Provinzen des römischen Westreiches*, developed important ideas, which are accurate social history and even social politics. His preface on the relationship between his research and his own time deserves to be remembered to-day. He praises above all in recent historical investigations "the respect for the characteristic way in which each nation expresses the spirit of humanity, and a conviction that beside the great historical personalities the nations themselves are to be regarded as the individuals, into whose soul and spirit research must try to penetrate."[4] "Germans and Romans became the representatives of the new civilization."[5] By an examination of their intimate historical interrelations "of the way in which the lands of the Roman empire in the west became germanized, of the fusion of the two peoples, and of the extraordinary stimulus this process received from the very nature of the early settlements, resulting as they did in the transference of so many Roman elements to the Germanic world," he hopes to "show an ever increasing approach of each to the other." He is especially glad that the tendency to look on everything Germanic as barbarism has ceased, and that even Romance scholarship has realized the high ethical gifts which the youthful German race brought to the languishing Roman world.

Gaupp's work raised the treatment of this great problem in the history of civilization to a higher level. Research is placed beyond general opinions on a concrete basis, and the necessary distinction is made between the different settlements of the various German tribes, which had by no means the same

[1] *Histoire des Institutions Mérovingiennes*, the second volume of which gives a constitutional history of Carolingian times.
[2] *Deutsche Verfassungsgeschichte*, i. *Die Zeit vor den grossen Wanderungen.*
[3] Ibid., i, 31.
[4] Preface, vi.
[5] Ibid., ix.

methods of colonization.[1] Most important of all, Gaupp had a better understanding of the real basis of this new development, for he began by trying to describe the late Roman conditions with which the Germanic conquerors now came into contact. No longer did a more or less vague and idealistic picture of classical Roman civilization serve as the starting point of his investigations. The simple assertion by which he safegaurded himself against any suspicion of political bias indicated in fact an immense advance: "My only purpose throughout has been to describe things as they really were."[2]

While scholarship was thus gaining in breadth and depth, Möser's theories continued to find new adherents. Economic history especially seemed to profit by his method of proceeding from present conditions to the past. The Dane, Olufsen, followed his example and as a practical surveyor arrived at new conclusions concerning the economic development of the past by technical arguments drawn from existing field-divisions.[3] Georg Hanssen in his *Ansichten über das Agrarwesen der Vorzeit*, published from 1835 onwards,[4] materially assisted in spreading this new criterion in Germany, and helped to give scholars a special bias towards agrarian history. He realized the novelty of this procedure, and felt that it was helping in the progress of historical study.[5]

Dönniges' popular work on *Das deutsche Staatsrecht und die deutsche Reichsverfassung* (1842) relies on Möser's theory, and on its further development by Eichhorn and Savigny.[6] But the theory also spread outside Germany. I need only mention Kemble's great work, *The Saxons in England* (1848), which followed German scholars (Eichhorn, J. Grimm, Dönniges, and others) and saw in the Mark "the original basis on which the whole social order of the Germans rested". Kemble went even farther.[7] For him the Mark is a voluntary union of freemen with full self-determination in the management of their affairs. His method of investigation is noteworthy. He relied on Grimm's *Weistümer*, i.e. on sources of a much later period, confirming still further the method of reconstruction so popular since Möser's day, in spite of the hesitation which even Grimm felt about using these documents as sources for the elucidation of early times. He emphasized the fact, however, that there was no historical material in England for the early period, but held that there was no reason to doubt that the course of development there had been the same as in Germany.[8]

Later scholars in Germany unhesitatingly adopted the assumption that primitive conditions continued throughout the centuries. It appears clearly in Georg Landau's book about the German Territories (1854). A native of Hessen,

[1] Thierry, *Lettres sur l'histoire de France* (1827), had already helped in this direction; see especially 11.

[2] Preface, ix.

[3] *Bidrag til Oplysning om Danmarks indvortes Forfatning i de aeldre Tider, især i det trettende Aarhundrede.* Copenhagen, 1821.

[4] These appeared first in *Falcks Staatsbürgerlichem Magazin III und VI. 1835 und 1837*, and were later collected in Hanssen's *Agrarhistorischen Abhandlungen*, i (1880).

[5] "Recent historians," he said in this essay, p. 1, "unlike earlier scholars, have directed their attention much more to the investigation of conditions, as well as to the study and report of events, thus putting history on a firmer foundation."

[6] See what is said on pages 5 and 6 on freedom and the community.

[7] "This is the original basis upon which all Teutonic society rests, and must be assumed to have been at first amply competent to meet all the demands of society in a simple and early stage of development: for example, to have been a union for the purpose of administering justice, or supplying a mutual guarantee of peace, security, and freedom for the inhabitants of the district." Kemble, *The Saxons in England* (1848), i, 53–4.

[8] Ibid.

he had already in 1840 published a *Beschreibung des Kurfürstentums Hessen*, and it then occurred to him that there was a "similarity between the past and the present" and that development must have been conditioned, not by chance, but by an organic life based on definite laws. In order to study this connection he used the retrospective method of investigation, proceeding from the known present to the unknown past. It must be remembered that Landau purposely and consciously limited his research to matters concerning the land. He gave as his reason that territorial conditions were the substructure of the whole, the true basis on which the national life was built up.[1] It was agrarian history. The same ideas appear in G. L. v. Maurer's work of the same year (1854): *Einleitung, zur Geschichte der Mark-Hof, Dorf- und Stadtverfassung und der öffentlichen Gewalt.* "The state," he says, "like the individual, is more or less the creation of its own history, which, like nature, is subject to certain rules and laws." The constitution of the state, according to v. Maurer, originated in interconnecting arrangements about land and property, and, above all, in the Mark. But beside these he places, in the first instance, the types of village and town constitution, the conditions of seigneurial land ownership with its manorial system, and lastly the history of public authority itself. These are all closely connected and one cannot be made clear and comprehensible without the others. v. Maurer proceeded to deal with them in separate works.[2]

Thus research was more and more forced in one definite direction. All public arrangements seemed to be the result of the territorial system in Hüllmann's sense. It is true that G. L. v. Maurer's works to some extent altered the old theory of Möser. The separate homestead system as the basis of the whole development, an idea derived from the study of Westphalian characteristics, did not appear convincing to Maurer. On the contrary he thought that the village was the starting point. "The first cultivation of the land was not carried out by individuals but by whole families and tribes."[3] To a very great extent Maurer also used later conditions to explain earlier accounts. Indeed, it may be said that Grimm's edition of the late medieval *Weistümer* was the real basis of his whole exposition. At first, in his preface of 1854, he was careful in his use of early sources and cautious in criticizing and limiting his assumptions, but subsequently he followed more freely the accounts given in later sources; the manorial system appears to an increasing extent as the basis of sovereignty, and the constitution of the state as the root of all public institutions.

Thudichum in 1860 supported the researches of Landau and G. L. v. Maurer. Like Landau, he described the system of Gaus and Marks (*Die Gau- und Markenverfassung in Deutschland*), proceeding from the history of his homeland, in this case the Wetterau. He pays still less attention to the chronological analysis of his sources,[4] and, following Maurer and Landau, unhesitatingly accepts not only the late medieval *Weistümer*, but also even later sources, as evidence for the earliest systems. He, too, was influenced by the theory of primitive freedom. Most of the German peoples formed, according to his theory, "completely

[1] See the Preface, p. iv.

[2] *Geschichte der Markenverfassung in Deutschland* (1856); *Geschichte der Fronhöfe, der Bauernhöfe und der Hofverfassung* (1862 ff.); *Geschichte der Städteverfassung in Deutschland* (1869 ff.).

[3] Introduction, p. 3.

[4] On the very first page he states that the documentary sources of German history begin in the eighth century.

free states," with republican administration even in the time of Tacitus.[1] Thudichum's work is certainly of some value even to-day. Many explanations have been made possible by using these later sources, and there is no reason to dispense with their help. But even though in details he was able partially to correct, and to formulate more clearly, the knowledge already gained, in general he could not escape from the magic circle of the manorial theory of development.

Only Waitz, in his great work on German constitutional history, was able to break away from this biased method of approach. But the extraordinary merit of Waitz, in my opinion, lies elsewhere, in the fact that by the most careful analysis of his sources he set limits to their application, and as far as possible avoided the use of late documents.[2] Only thus could the process of development be understood, only thus could the hypothesis be reached which v. Sybel had recognized to be requisite for a successful advance in research.[3] The very "faults" with which later historians reproached Waitz's exposition, his prosaic and dry reliance on the actual words of the sources, and his direct quotation of them, often at full length—("the great card index" as his work has been mockingly called)—first made it possible to clear up the old unscientific treatment of these great problems in the history of culture. Thus, in the first volume of his constitutional history, he could coolly shake off those earlier theories of German barbarism[4] which were deduced from a superficial reading of the sources and a misinterpretation of texts in Cæsar and Tacitus—theories which were partly the result of political prejudices, falsely read into the sources. Waitz thus caused the problem to be regarded as a single whole, and so the state came into its own again. He not merely rejected the old Mark association theory[5]; he also emphasized the fact that "among the Germans full political power was vested in the community; its council contained within itself all law and dominion, and all authority proceeded from it."[6] In this Waitz is thinking of the greater council of the whole Gau, of the tribe. It chose the authorities. The king, or if there were no monarchy, the elected prince, did not compete for power, but was the executive organ of the people.

The researches of Paul Roth were later of fundamental importance for the whole theory of early German civilization. The more recent French supporters of the earlier barbarian theory logically denied that among the uncultured Germans, living like savages in bands and hordes, there could exist a public authority or a state; but Roth attacked this theory and set out from the beginning to prove that "the basis of the German state was not a vassal relationship or dependence on the chief of a band, but a simple bond between subjects, the dependence of every free inhabitant on the common authority of the German state. . . ."[7] Even before the folk migrations German community-life rested on the subordination of all freemen to a common authority. In most of the Middle German tribes the national council was the sovereign power; it took the place occupied by the king in the Frankish kingdom. Individuals were obedient to it; its decrees were binding on all. . . . "It is the equality of all freemen that forms the main basis of the German state. Authorities are chosen by the community and responsible to it. . . . Everything is permeated by the principle of self-

[1] See his *Der altdeutsche Staat*, 1862, 57.
[2] See above, p. 12.
[3] See above, p. 11 f.
[4] See i, 6.
[5] See above, p. 12.
[6] See i, 53 ff.
[7] *Geschichte des Beneficialwesens*, 1850, Preface, vii.

government. As the individual rules his family, so the village, the Mark association, the Gau, rule themselves. And yet this multiplicity is not without a common centre. The national council of all freemen is the head of the tribe and guides the whole." [1]

Thus Roth holds in the main to the earlier theory of German scholars, concerning the freedom and equality of the Germans and their self-government. According to him, however, this democratic constitution then gave way to monarchy, "not by a sanguinary upheaval, not by usurpation or a cunning exploitation of circumstances on the part of an overpowering force, but by the free choice of the people." And this new monarchy is not a "shameful despotism", but is of such a kind that even princely rule is magisterial in character. Roth sees a survival of this old German system in England "which remained comparatively free and happy because it suppressed the Celtic and Roman elements". [2]

Thus, although Roth adopted some points in the earlier theories of Möser and Eichhorn, he subordinated them to the idea of the state as the basis of all German organization. But his great controversy with Waitz about the origin of the feudal system, and his position with regard to J. Ficker's views on the difference between the Roman and the German conceptions of the state, made him emphasize all the more strongly the importance of the state in the earliest Germanic organization.[3] His opposition to Ficker's "German conception of the state" and its supposed tendency to laxity and disruption, gave him a chance of expressing his views about the culture of the German peoples. "Emerging from the isolation of tribal life in which Tacitus depicts them, the Germans rush upon the Roman world, not merely in single tribes or chance unions of several tribes, but in federations which become more and more consolidated during the centuries. The differences between the individual components of these federations are levelled up." [4] Roth is of opinion that the tribes were assimilated by the conquered people. "The Roman provincials themselves became free associates in the Frankish kingdom." He sees in this a difference between German and Roman conquest, in that the former gives to the conquered people the same legal rights as the conquerors. The conquered retain their characteristic systems, though only so far as is compatible with uniformity of government.

Thus a theory arose which directly contradicted the older hypothesis of enslavement. As it could be based on sources belonging to the early Frankish period, the other theories concerning that period, the supposed savagery of the conquerors and their destruction of all Roman culture, lost every logical support. They were seen to be incompatible with the historical facts found in the earliest documents. But at the same time the Mark-association theory, as Maurer had developed it, was assailed by this vigorous emphasis on the principle of public authority as the basis of the whole constitution. Was there indeed any logical compatibility between the two?

A very important combination of v. Maurer's earlier Mark theory with Roth's theory of the state is seen in Gierke's great work, *Das deutsche Genossenschaftsrecht*. The underlying connections here should be noted. The first volume appeared in 1868 at a time when there were vigorous co-operative movements

[1] Ibid., 29 f. [2] Ibid., 33.
[3] See his later work, *Feudalität und Unterthanenverband*, 1863, 23.
[4] Ibid., 19 f.

in Germany; and the book was dedicated to G. Beseler. It closely follows his theory. The wide expansion and great influence of the corporative impulse, which Beseler had stressed as a peculiar feature of German life,[1] here becomes the foundation of the whole social and political order. Like Beseler and the holders of the earlier freedom theory, Gierke is convinced that all freemen as associates had equal rights and equal duties. The right of the associates was freedom, the conceptions of freedom and of folk-association coincided.[2] The folk-association was identical with the sum of all freemen capable of bearing arms among the people. Each man was equally the co-representative, co-protector, and co-defender of the folk-peace and the folk-law; and among the Germans this folk-association took the place of the state.

It will be seen that here Gierke departs from v. Maurer's views, and introduces the conception of the state according to Roth into the Mark theory, constituting a great advance on the older theory, which he otherwise followed closely.[3] With direct reference to v. Maurer he adds: "The principle which determined the settlements and their earliest development was everywhere the same, a communal occupation of the land, from which there then developed communal ownership from the legal point of view, and communal farming from an economic point of view."[4] But Gierke placed the political associations, Gau and folk, in a higher category than the economic ones. It is true that he arrived at this extension of v. Maurer's theory, not by the help of historical evidence, which is wholly lacking, but by speculation. Gierke tries to surmount the difficulties of combining these heterogeneous developments by supposing a temporary affiliation between them, and at the same time another and higher aim for the later forms. Originally, he says, every political association was a Mark-community. But folk- and Gau-Marks were not used for the individual economic needs of the folk- and Gau-associates, but for the purposes of the community as a whole; this was why the rights of the community were so prominent that they assumed the character of a public ownership, and as such were transferred to the kingdom and its representative the king, as greater states were formed.[5] Gierke must have felt how different these views were from v. Maurer's. The Mark-community of the older theory is essentially only an economic community. While v. Maurer as a logical result of his views about the Mark finally came to the conclusion that whole territories (e.g., Bavaria, Alemannia, Thuringia, Carinthia, Carniola, Austria, and perhaps Brandenburg) originated in such ancient Marks,[6] Gierke realized the absurdity of such a comprehensive definition. He did not, however, draw the obvious conclusion from his realization of the fact that those areas never were Mark-communities in the sense of economic associations, nor did he doubt the general correctness of v. Maurer's view. Instead he tried to reconcile the two ideas. He thinks it possible "that those lands at some time possessed an undivided common Mark", which did not have any determining influence on their development.[7] But does not this admission shake Gierke's theory too? If in so many cases the original Mark-community had no actual determining influence on the development of political communities, how

[1] See above, p. 10.
[2] *Das Deutsche Genossenschaftsrecht*, i, 35.
[3] See, for example, Ibid. 60 f.: "As a rule tribes . . . settled in a Mark . . . and thus the community became landowner and possessor of the Mark, and decided the manner of the settlement and the apportioning of the land."
[4] Ibid., 55.
[5] Ibid., 81.
[6] Op. cit., Preface, 49.
[7] Op. cit., 81, note 1.

are we to admit the probability that as a general rule every political community originated in a Mark-community?

These views were soon subjected to a serious and authoritative attack. Waitz had already opposed them, though rather feebly,[1] and now in 1871 Rudolf Sohm attacked them with vigour. He opposed the French school, which denied that the Germanic barbarians had any real conception of the state, and he showed that its views were really supported by the manorial theory of German scholars. "The views of v. Maurer and Gierke change the Frankish kingdom into a great estate and Frankish monarchic rule into a peasant economy."[2] Sohm places Gierke's association-theory of early German law beside that of Rogge concerning the absolute freedom of the Germans. "The old German political community is dissolved into chaos alike by Rogge's feuds and by Gierke's associations (*Genossenschaften*)."[3] Sohm utterly denies that the Germanic conceptions of state and association are identical, and he emphasizes the fundamental difference between association and state in old German law.[4] His exposition has, at any rate, the great merit of showing that v. Maurer's and Gierke's theories are so artificially constructed that opposite opinions can claim to be equally well founded.

Meanwhile, the new method of scientific research in the history of culture was further developed by August Meitzen. A practical surveyor, like Olufsen, he used the present-day divisions of the soil as an important criterion of economic conditions in the past. With their help he drew up in 1868 a series of original types of settlement,[5] which he regarded as survivals of quite definitely early periods, and made use of them to describe the economic characteristics of those times. First, the separate-homestead settlement, which he limited at first to Westphalia and the plain of the Lower Rhine; secondly, the nucleated villages between the Moselle and the Elbe, which "have preserved in a surprisingly early form the remains of a communal system" in their division of the arable into *Gewanne* (in English "shots" or "wongs"), in which the owners of the individual *Hufen* have proportionate shares.[6] He insisted that "the most remarkable system of land division and land cultivation, directly descended from the earliest type of Mark-association", is to be seen in the *Gehöferschaften* of the Moselle country of Trier.[7] With these types of the old German folk-land he contrasted the more recent group of colonial villages of the Slavonic East, which are essentially manorial types, corresponding to the later period of their foundation.[8]

Meitzen acknowledged at once, and realized more and more as he handled his material in greater detail, that these types do not occur uniformly over compact and limited areas of settlements. Quite apart from the occurrence of later forms of settlements within the district of the old folk-land (a co-ordination which may easily be explained by chronological sequence), complete nucleated open *Gewanndörfer* are found in regions of separate homestead settlement, and vice versa. In order to explain these phenomena, Meitzen was often forced into

[1] V.G. ii², 163, note 1 (1870): "Gierke seems to be quite wrong in stating that there was no such thing as a state among the early Germans or the Franks."
[2] *Die altdeutsche Reichs- und Gerichtsverfassung*, Preface, 9.
[3] Ibid., 12. [4] Ibid., 15.
[5] *Der Boden und die landwirtschaftlichen Verhältnisse des preussischen Staates*, i, 344 ff.
[6] Ibid., 349. [7] Ibid., 348.
[8] Ibid., 356 ff., 366 ff.

bold fabrications, the contradictions of which barely concealed the artificiality of the whole theory.[1]

One fact must here be emphasized: Meitzen did not arrive at these views independently and gradually as a result of his research into land-division, but was from the beginning decisively influenced by the theories of v. Maurer and Landau. He regards it as certain that the early settlements were the work of the Mark-association,[2] and takes equally for granted the common ownership of the Mark-land by tribal and family groups. He did not reach a knowledge of the types of settlement from the lay-out of the arable (*Flureinteilung*), but adopted them from earlier economic history, and tried, as it were, to illustrate and prove them from that lay-out. The long interval between those early settlements and the conditions of to-day left a back door always open by means of which obvious discords might be eliminated as exceptions or later transferences.[3] In general, moreover, it is surprising how arbitrarily the supposed characteristics of the different types are used in dealing with individual cases. For example, in one village (Domnowitz in Silesia) which he ascribes to later colonization, Meitzen notices that the grouping of the fields in the map has the appearance of *Gewanne*; but there is no trace of the principle that each farmer should receive a proportionate share in each *Gewanne*.[4] The absence of this principle is the decisive factor in classing this village in the group of later colonization. But immediately afterwards he points out that in a village of this group in the same region (Domslau), the arable (*Feldflur*) is divided into absolutely regular *Gewanne*, in which the due shares of individual owners are numerically apportioned according to the number of *Hufen*.

The next ally to come to the help of research into the history of culture was the study of place-names, used as sources for the history of settlement. In Germany the pioneer was W. Arnold, who in his book *Die Ansiedelungen und Wanderungen deutscher Stämme* (1875) sought to describe the settlements and wanderings of the German tribes by the aid of the place-names of his home-land, Hessen. His work laid the foundation for the succeeding period and was later taken as pattern and guide by numerous scholars. I shall here omit the linguistic side of the question and merely point out that different etymological explanations of the same name have been given by different philologists. What is fundamentally more significant, in my opinion, is the fact that the allocation and meaning of these place-names from the point of view of the history of settlement should have been studied by men who were definitely under the influence of certain theories of economic history. Earlier scholars imagined Germany in the Roman period as a great primeval forest, full of marsh and moorland [5]; consequently Arnold ascribed place-names connected with clearing to the early period of the first colonization at the end of the fifth century,[6] because he could only imagine that the sites themselves must have been acquired for settlement by means of clearing. Arnold also holds firmly to the Mark-theory.[7] He attributes

[1] See below, Chapter IV.

[2] Op. cit., 344 f.

[3] Thus, for example, the appearance of big estate-owners in the *Gewanndörfern* of the old folk-land is explained by him as due to early peasant property. Op. cit., 354. Of course, he gives no documentary authority for this.

[4] Ibid., 361.

[5] See below, Chapter II.

[6] Op. cit., p. 249 ff. On 395 he actually states: "After the thirteenth century, the amount of woodland remained on the whole unchanged." See also his *Deutsche Urzeit* (1879), 214, 230.

[7] See especially, 249; and *Deutsche Urzeit*, 231.

the smaller clearings to the common freemen, who on account of their comparatively small property could clear only little portions of the Mark, "as an accessory to land which was already tilled." These were then subject to the common routine of cultivation. The great *Bifangs*, on the other hand, were the sole property of great lords, for the work of reclamation was carried on from their manorial demesnes.[1] Arnold also deals in an even more arbitrary fashion with conditions as shown in the sources. According to him the usual view that the share in the common Mark was an appendage to the divided arable land should simply be reversed: "the Mark-association is the original; and private property in land is a derivation from it."[2] This would explain the primitive routine of common cultivation, in which there was as yet no completely developed system of private ownership but a constant reallotment of the share of each owner in the arable land, "a change not only in the utilization but in the ownership of the fields." It is obvious how little Arnold realized what was proved by the sources, and how freely he has sometimes construed them, at any rate as far as their significance for economic history is concerned.

Long before Arnold's time other scholars had already used groups of particular place-names for the purposes of the history of settlement. I may remind the reader that Kemble in 1848 considered that English village-names in *-ing* (A.S. *ingas*) were in general patronymics, and hence that they were derived from a common tribal ancestor or first founder.[3] These noteworthy conclusions, which later had many adherents,[4] were, however, also dependent on, and determined by, quite definite theories of economic history. We have seen that Kemble adopted and developed the German Mark-theory,[5] and his followers did not question it, since no one doubted its correctness or thought it necessary to examine it critically. In Germany, S. Riezler in 1887 [6] explained the numerous place-names in *-ing* of the Munich district as clan or family names, and assumed that "during the immigration of the Baiuvari the clans came in as compact masses, and as compact masses they founded their settlements".[7] In the conclusion which Riezler drew from these place-names, he was influenced by the prevailing theories (as formulated by v. Sybel and Gierke) about the importance of family groups as the basis of the economic and political organization of the community. He expressly quotes these scholars in support of his assumptions.[8] In 1880, however, Waitz had opposed Kemble [9] and had pointed out that "only a certain number of those place-names were of this type. The form is used in general to denote a 'belonging-to'; either geographical or personal relationships may be meant".

After jurists and practical surveyors, especially in Germany, had thus laid down the essential lines of *Kulturgeschichte*, a French historian again took up this important problem. In 1875 Fustel de Coulanges, in the first volume of his *Histoire des institutions politiques de l'ancienne France* undertook a thorough

[1] Op. cit., 267.
[2] Op. cit., 269; see also his *Deutsche Urzeit*, 222, 229.
[3] Kemble, *The Saxons in England*, i, App. A.
[4] So K. Maurer in *der Münchener kritischen Überschau*, i, 70 (1853); also Stubbs, *Constitutional History of England*, i, 81.
[5] See above, 13.
[6] "Die Ortsnamen der Münchener Gegend." *Oberbayerisches Archiv.*, xliv, 33 ff.
[7] Ibid., 57.
[8] See 60, (v. Sybel), and 63, (Gierke).
[9] *VG.*, 3rd ed., i, 84.

investigation into the German peoples and their relation to the Romans. He went to the sources themselves and brought their evidence again into prominence, displaying a critical ability as ingenious as it was acute, and an admirable lack of prejudice, uninfluenced by the theories which were then dominant, especially in Germany. The result was amazing, above all in France, for it was a definite refutation of the earlier conceptions of German barbarism and of the destruction of Roman culture. To Fustel, that important period of transition does not take the shape of a war between Germanism and the Roman world-empire. He points to Tacitus himself, who makes one of the Germans say that they wished in their own interests to be federated with the Romans. Nothing seems to him more mistaken than the idea that the Germans were hostile to culture and opposed to Roman civilization.[1] He stresses Geffroy's noteworthy observation that the type of the "paysan du Danube" was quite unknown in Roman conceptions, and was first invented in the sixteenth century by a Spaniard, Guevara.[2]

Fustel pointed out that the Germans did not invade the Roman Empire merely as enemies and with violence, but that a peaceful penetration took place over wide areas, by manual labourers and servants, and by soldiers in the Imperial service. He warns us not to imagine the warlike inroads of the Germans as having destroyed everything.[3] Many German tribes placed themselves at the disposal of the Romans not only as soldiers, but also for peaceful employments, as contemporary sources prove.[4] The number of German peasant-farmers (*coloni*) on Roman land was, he says, so great in the fourth century that several recent scholars have even seen in them the origin of the colonate.[5] In particular, Fustel attacked the old idea that the earlier provincial population was enslaved by the conquering Germans.[6] Neither serfdom nor the colonate, in his opinion, originated in this way, as historians of the sixteenth to eighteenth centuries assumed, in order to explain the class-distinctions of their own time. Both phenomena are really found earlier. The former landowners were not robbed of their right to the soil[7]; on the contrary, the Germans to a considerable extent, took over existing conditions. Not communal ownership and reallotment of the land, but rather private ownership was the rule among the newcomers.[8] The Germans were not nomads but permanently settled farmers. Their social conditions show a manifold gradation, similar to that of all early peoples.[9] The horde did not rule; a state system already existed.[10] The freedom of the Germans was not unrestrained, but was compatible with the monarchy, which was the chief form of rule.[11]

It must be considered an important advance in research that Fustel very decidedly emphasized the difference between conditions in the times of Cæsar and of Tacitus and those which prevailed in the fifth century at the time of the German conquest of the West Roman Empire. During these three centuries important changes took place both in social and in political organization,[12] and the combinations of German peoples had moreover changed, as new tribes arrived from the East and pushed the earlier settlers in the West farther westward still.

[1] Op. cit., 322.
[2] *Rome et les Barbares*, 80 n.
[3] Op. cit., 333, especially n. 1.
[4] Ibid., 335.
[5] Ibid., 343.
[6] *Histoire des Institutions Politiques*, 395 ff.
[7] Ibid., 400 ff.
[8] Ibid., 459.
[9] Ibid., 286 ff.
[10] Ibid., 291.
[11] Ibid., 294.
[12] Ibid., 306 ff.

These statements of Fustel meant the real release of a constructive history of culture from the old theories of violence, and they opened new paths before it. This, however, did not happen at once, for in spite of the fact that Fustel's theses were based directly on the sources, they were not at once appreciated by every one at their true value. The theory still prevailed that the Germans were semi-nomadic in the times of Cæsar and Tacitus; not only was it held by O. Gierke, but W. Arnold [1] and Wilhelm Sickel (in his description of the old German republic) [2] made it the starting point of their account of German economy. August Meitzen in 1882 sought once more to confirm it in detail [3]; and further developments in research seemed to establish it firmly.

Meanwhile, a new orientation in legal and economic history was beginning to gain ground. At the time it was known as legal archæology,[4] but now that we know its origin and its causes, we might also call it sociology. It was clearly influenced by two, or possibly by three, intellectual tendencies, first by the social movement which arose about the middle of the nineteenth century, secondly by Charles Darwin's scientific theory of evolution, and finally by the advance of comparative philology (F. Bopp, J. Grimm), The first two motives may be clearly seen in the works of Sumner Maine. In 1861, in his early work on *Ancient Law*, he assembled together the different forms of social union among the various peoples, not limiting himself to Europe but setting India in the foreground; he had worked in India and had become familiar with the social system there from personal observation.[5] The new method of study is comparative. The Slav world is also used for purposes of comparison, and especial interest is attached to Russia, whose conditions are described in the works of A. v. Haxthausen [6] and Tegoborski.[7] Analogies are sought and similarities in social evolution are emphasized. This tendency in research is as international as social democracy itself, and arose in the same period. In principle, however, it was not new, for the earlier social historians, who thought of the Germans in the age of migration as savages, put them into the same class as the Indians or other uncivilized peoples.[8] But what was new was the expectation that an investigation of conditions among these present-day barbarians would throw light upon the past of peoples who had reached a higher stage of civilization. Here we see clearly the powerful influence of the scientific theories of evolution, especially those of Charles Darwin. Just as these assumed a continual advance from lower to higher forms of development and proved that this ascent took place step by step, so the new sociology also believed it possible to systematize an evolution of the various peoples from stage to stage of civilization, so that a similar progress from the most uncivilized to the most highly developed stage would hold good for all. In this matter science took its colour from the equalizing tendency of social movements in the political sphere, and sought to eliminate the individualistic

[1] *Deutsche Urzeit* (1879), 215.
[2] *Der deutsche Freistaat* (1879), 7.
[3] *Das Nomadenleben der Germanen und ihrer Nachbarn in Westeuropa.* (*Verhandlungen des Zweiten deutschen Geographentages in Halle*, 76, 79.)
[4] See the preface to the French translation of Sumner Maine's Dissertations on Early Law and Custom in *Bibl. de l'Hist. du Droit et des Institutions*, ii, 3, note 1.
[5] Ibid., preface, xii.
[6] *Studien über die inneren Zustände, das Volksleben und insbesondere die ländlichen Einrichtungen Russlands* (1847), and the *Ländliche Verfassung Russlands* (Leipzig, 1861).
[7] M. L. de Tegoborski, *Etudes sur les Forces productives de la Russie*, 4 vols, 1852–5.
[8] So also Montesquieu, *L'esprit des lois*, xviii, 11, 22, and Voltaire, *La philosophie de l'histoire* (1765), 295.

features of historical development. An attempt was made to prove from the history of culture that the favourite ideas and ideals of this great social tendency, the character of which was at that time distinctly communistic, had existed as a sort of golden age in the youth of the peoples. Hence it seemed almost axiomatic that the original form of landownership was collective, and that private ownership did not develop until much later. The freedom and equality of the associated settlers was a further attribute of that imaginary primitive period, common to all nations of the world. It was even believed that the conditions of the Dithmarsch peasants were a survival of that time, untouched by any of the great movements of the ages.

In 1871 Sumner Maine devoted a special work to his favourite theme, *Village Communities in the East and West*. Here, for earlier German conditions, he made uncritical use of v. Maurer's Mark-theory, which seemed to offer a welcome support to his assumptions. His theory quickly found many adherents in other countries. In the next year E. Laveleye came to its support in France. He first published in the *Revue des deux Mondes* a series of articles,[1] which are mainly a notice of Sumner Maine's two works, but deal also with a number of other detailed works of similar tendency, such as Nasse's *Feldgemeinschaft*, Haxthausen's description of Russian conditions, and others. The Russian communal system of the so-called Mir played a great part in these. The second article, dealing with the German Mark, is based on the works of v. Maurer and A. Meitzen, and on G. Hanssen's studies of the *Gehöferschaft* system of the Trier district. The last-named system and the Russian Mir were sacrificed, so to speak, to the theory of communal ownership and communal cultivation among the primitive peoples. The third article dealt with types of the family, and here the household-communities (*Zadruga*) of the Southern Slavs were described in detail.

In the same year as this work of Laveleye, the legal historian P. Viollet published a treatise on the *Caractère collectif des premières propriétés immobilières*,[2] in which he arrived at similar conclusions. From a scientific point of view his preface to this work is very instructive, for in it he founded the method of comparative legal history, on the model of comparative philology. He does not, however, fail to realize the great danger of *a posteriori* conclusions drawn from common or similar legal conditions in two widely distant civilizations. He cannot stifle a doubt as to whether these are always to be considered as evidence of common origin or of direct borrowing. He considers, however, like Sumner Maine and the American Morgan,[3] that conditions among uncivilized peoples of the present day may give us a vivid and faithful picture of the social development through which our forefathers once passed.[4] He, therefore, proceeds from the travellers' tales of Asiatic nomad peoples to explain the accounts of the old Germans given by Cæsar and Tacitus. He explains the differences between the two latter as a further development in the intervening period of about 150 years.

Viollet also deals with sources belonging to the historical period proper, and which are relatively close to one another in date, and seeks to establish from them the different stages of a definite process of evolution, leading in continuous progress

[1] "Les formes primitives de la propriété," *Revue des deux Mondes*, 1872, i, 100, 135 ff.; ii, 505 ff.
[2] *Bibl. de l'Ecole des Chartres*, xxxiii, 455 ff.
[3] *Systems of Consanguinity and Affinity of the Human Family*, Washington, 1869.
[4] Op. cit., 459.

from barbaric primitive conditions to our modern civilization.[1] Such primitive conditions are still, in his opinion, to be found in the *Lex Salica* and other early Frankish legal sources. He deals especially with the history of sales, and thinks that because the subject is not mentioned in the *Lex Salica*, we may conclude that the sale of land was "hardly known at all" at that time among the Germans. The numerous contracts of sale in Merovingian and Carolingian times, which contradict this theory, are simply explained away as Roman!

Laveleye's essays, which were later collected in a book, *La propriété primitive*,[2] and translated into German,[3] soon obtained a considerable influence over scholars and were looked upon as a compendium of sociological wisdom. In France, Geffroy at once made use of these theories for a detailed study of the *Germania* of Tacitus in his book *Rome et les Barbares* (1874). Here he applied the comparative method of his predecessors, Laveleye and Viollet, to the evolution of Germanic society, relying on Haxthausen for the Slavs and on v. Maurer for Germany. Communal land-ownership is regarded in general as the primitive state, and this assumption is still further extended, even the Anglo-Saxon "folk-land" being explained in this sense. Meanwhile, Nasse was studying English agrarian conditions during the Middle Ages, and he concluded from the system of scattered strips in fields and the compulsory routine of cultivation which then prevailed, that there must have been a common ownership of fields in the medieval villages.[4] His theories were used by Sumner Maine when considering the village community in his *Lectures on the Early History of Institutions* (1875).[5]

In 1877 all these views were brought into one grand canonical system by the American, Morgan, who has not unjustly been called one of the literary patriarchs of the newer social democracy. His widely read and often quoted work *The Ancient Society* has the significant sub-title "Inquiries into the Progress of Humanity from Savagery through Barbarism to Civilization". According to his view, the evolution of mankind everywhere took place in the same way and along the same path, so that there was a ladder of progress from the lowest stage to the highest cultural development, up which all peoples must climb. "The earliest ancestors of the Aryan nations probably had to work through stages of culture like those of present-day barbaric and savage races." When the Germans first learnt to know the Romans, they were at the top stage of barbarism. From the accounts of Cæsar and Tacitus, Morgan thinks that the Germanic family of that time was syndyasmic. "Various related families are united in one household and live communistically."[6]

Soon after the publication of these theories, doubts arose as to their correctness. It was the great merit of K. Th. v. Inama-Sternegg, who in 1879 attempted the first scientific account of German economic history, that he opposed the sweeping assertions of v. Maurer concerning the importance of the German Mark-associations. With a critical acumen, otherwise not always to be found in his work, he brought into prominence the main point and the main source of error

[1] Op. cit., 498: "Voici les divers échelons de cette gradation descendante," see also 504 (dealing with land-ownership), "la source toujours vive d'où découlent les efforts incessants qui, de siècle en siècle, transforment, en l'améliorant, l'état materiel de l'humanité."

[2] *De la propriété et ses formes primitives*, 1874.

[3] K. Bücher, *Das Ureigentum*, 1879.

[4] *Über die mittelalterliche Feldgemeinschaft und die Einhegungen des 16. Jahrhunderts in England.* Progr. d. Univ. Bonn, 1869.

[5] See 3 and 4; he also uses chiefly G. L. v. Maurer and Laveleye.

[6] Morgan, *The Ancient Society*.

in Maurer's assumptions, viz. " his uncritical derivation of later Mark-communities from old Gau-Marks, and his failure to realize the manorial origin of many of these great Mark-communities ".[1] Thus v. Inama really pronounced sentence on all the other accounts which were built up on v. Maurer's work and marred by the same methodological error. Elsewhere, also, he decisively opposed the fundamental theses of the sociological school. " A common ownership by the clan, of all the landed property of its individual members," he wrote, " is as unthinkable as a similar right on the part of the Mark-association." [2]

Characteristically,[3] however, v. Inama did not pursue his correct observations to their logical conclusion, but tried in a friendly and accommodating spirit to act as a mediator. This was, perhaps, also due in part to the fact that as a practical economist the careful and critical use of sources, customary among historians, was less familiar to him.

A few years after v. Inama's work, Denham W. Ross was led to attempt a revision of these theories.[4] He aims at supplementing the material already at the disposal of scholars and at interpreting doubtful texts and documents, and, proceeding from these, he calls into question the correctness of the prevalent view. He opposes the theory of communal land-ownership and equal holdings in the time of Cæsar,[5] and rightly emphasizes the fact that undivided land should not be confused with common ownership,[6] analysing in detail the mistakes of the communistic theory.[7] In his opinion, private ownership of land was in existence before common ownership.[8] Denham Ross also subjected his opponent's arguments from the folk-laws to renewed criticism, and here, too, he rejected the prevalent theories. The importance of his work in the literature of the subject cannot to-day be denied, especially as it correctly emphasizes the general uncertainty of all this research, the scantiness of the documentary evidence, and the obscurity of the sources, which makes them susceptible of different and even contradictory interpretations.[9]

But this opposition did not prevail; on the contrary sociological collectivist theory spread ever farther. A characteristic example may be seen in the discussion among French scholars in 1885, which is recorded in the *Séances et travaux de l'Académie des Sciences Morales et Politiques*.[10] First of all, Fustel de Coulanges attacked Laveleye and tried by an examination of the sources to show that his fundamental theses were wrong, both from a social and from an economic point of view. The Germans were no longer nomads in the times of Cæsar and Tacitus, and private property may be clearly proved then.[11] In opposition to this, other scholars, especially the jurist Glasson, defended the communistic theory.[12] It is characteristic of the antitheses which appeared in this discussion, that Fustel's opponents reproached him, among other things, with having exaggerated the

[1] *Deutsche Wirtschaftsgeschichte*, i, 52, note 1.
[2] Op. cit., 101.
[3] See my notice of the second edition of vol. i of his *Wirtschaftsgeschichte* in *Mittell d. Instit.*, xxxii, 639 (1911).
[4] *The Early History of Land-holding among the Germans*, 1883.
[5] Op. cit., 17 f.
[6] Ibid., 61.
[7] Ibid., 63 ff. [8] Ibid., 65.
[9] See preface, iv.
[10] Vols. cxxiii and cxxiv.
[11] *Les Germains connaissaient-ils la propriété des terres?*
[12] *Académie des Sciences Morales et Politiques*, cxxiv, 87 ff.; and Ravaisson, Ibid., 147 ff.

culture of the barbarians.[1] Here we see the old Romanistic attitude still influencing the trend of thought.

In the course of the discussion Fustel de Coulanges aptly urged the criterion of chronology, which the jurists and sociologists had hitherto neglected in their treatment of the sources. He showed that there is no evidence of the oft-quoted Russian "Mir" until late thirteenth century sources, and that other evidence of communistic conditions of ownership is even later, often as late as the eighteenth century.[2] His weighty pronouncement in this connection was certainly very much to the point: "Avant de construire tout un beau système sur les communaux, le mir, les allmend, on ferait bien d'établir leur date et leur origine."[3] But its echo died away and it was unnoticed, chiefly, no doubt, because in both France and Germany the later standard works and text books of legal history were written by adherents of the communistic theory. The most influential were O. Gierke's works, especially his *Genossenschaftsrecht*, in Germany, and the legal histories of P. Viollet[4] and Glasson[5] in France. These scholars, holding as they did the chief professorial positions in both countries, had a great personal influence on the next generation, and thus there was naturally no serious opposition to their views. Moreover, Georg Kaufmann's *Deutsche Geschichte* (1880), dealing with the early Germans up to the time of Charles the Great, although it contained much that was correct, adopted the old catastrophic theory. "The folk-migrations flooded the world of ancient civilization with barbaric peoples, the East with Slavs, the West with Germans. The old civilization was brought to the dust, but where the Germans had destroyed, a new forest of young races grew from the ruins." His work deals chiefly with constitutional history, and so (after the manner of Sohm, to whom the work is dedicated) the state appears to him the essentially civilizing element. Without it, art and religion, economic activity and society, can do nothing; without it they produce only quickly-fading flowers, which lack a building to adorn.[6] The Germans, in his opinion, sowed the seeds of a new constitutional system in a soil saturated with the results of centuries of toil.

It is true that there was no lack of opposition later. I may remind the reader of Thevenins' significant investigation into the "Communia",[7] and of the attack made against the Mark-association theory by Richard Hildebrand, the lawyer and political economist, who went so far as to call it a "chimera" of the scholars![8] Also Felix Dahn, to whom we must allow (whatever we may think of his work in legal history) a thorough knowledge of German conditions and especially of the sources of that time, repeatedly attacked this theory and also the statements about the German lack of culture,[9] though he did not collect his isolated doubts and objections into an impressive refutation of the prevalent views. Neither was this done by E. Mayer, when he tried, by a comparison of German and French development, to explain parallel phenomena by means of a common Frankish

[1] Ibid., cxxiv, 80: "On craint que, pour une fois, il (Fustel) ne fasse trop d'honneur aux Barbares, et ne tienne pas un assez grand compte du génie juridique si particulier aux Romains" (Geffroy).

[2] Ibid., 145 f. [3] Ibid., 146.

[4] *Précis de l'Histoire du droit Français*, 1886. Second edition entitled *Histoire du droit civil Français*, 1893.

[5] *Histoire du droit et des institutions de la France*, 1887.

[6] See preface, *Deutsche Geschichte*, Georg Kaufmann.

[7] "Études sur la propriété au moyen âge. Les 'Communia'," in *Bibl. de l'École des Hautes Études*, 73 (1887).

[8] *Recht und Sitte auf den verschiedenen wirtschaftlichen Kulturstufen* (1896), 158 ff.

[9] See *Könige der Germanen*, ix, 1, note 425 (1902).

or even Roman origin.[1] On the one hand this early period did not really come within the scope of his work, which dealt mainly with the ninth to the fourteenth centuries, on the other its aim was rather to consider the matter from the legal point of view than to pursue the problems of economic history, which were touched upon only casually.[2]

As economic history became more thorough and expanded into detailed research, doubts and disagreements began to be more strongly felt. One after another the proud old horses paraded by the sociological theory went lame. First of all the famous *Gehöferschaften* of Trier were recognized to be a later communal arrangement forced on the people and seigneurial in origin[3]; then the Russian Mir suffered the same fate[4]; the Anglo-Saxon folk-land lost its importance as evidence, because its interpretation was seen to have been incorrect[5]; finally the southern Slav *zadruge*, properly investigated, was found not to contain what earlier scholars had tried to prove from it.[6] Thus the former supports gave way; and—most important of all—the old method borrowed from comparative philology was shaken, especially as the latter science had largely ceased to use it.

This short historical sketch of the literature of this subject has now reached its goal. It is not my purpose in this initial chapter to consider the most recent works dealing with many special branches of the subject, nor to state my own position with regard to the views of the many writers on this great problem. That in itself would fill a book with unending detail. In later chapters there will be opportunities to mention these works when dealing with special questions. Here it has been my endeavour to describe the main lines along which recent problems in the history of culture have developed, and in particular to show how much they have been influenced by the currents of contemporary thought and by general intellectual tendencies in the external political evolution of Europe since the sixteenth century. These are clearly reflected in all the more recent theories, which are indeed firmly rooted in them, the barbarian theory in the age of Humanism as a broad foundation, then the eighteenth-century theory of freedom and equality, leading directly to the association theory of the early nineteenth century, and finally the sociological point of view in the period of social democracy and internationalism, with its comparative method developed in imitation of comparative philology. The history of culture is a faithful reflection of general intellectual tendencies and of the ideas of successive periods, which have projected their ideals back into the historic past, seeking to prove a real existence for them there. The form of the particular problem which we are considering has been shaped during the advance of European civilization, which it reflects in all its features.

This fact provides a criterion on which to base a criticism of those theories. If the connections be clearly established, if we see where the prevalent views have originated, then it is possible to estimate them at their true value and to emancipate ourselves from them by going back to the original sources. For the

[1] *Deutsche und französische Verfassungsgeschichte* (1899), preface, 8.

[2] See, for example, op. cit. ii, 54 f.

[3] See K. Lamprecht, *Deutsches Wirtschaftsleben im Mittelalter*, i, 451 ff., especially Roerig, *Westd. Zs. Ergänzungsheft*, xiii, 70 ff.

[4] See the article "Mir" by von W. Simkhovitch in the *Handwörterbuch der Staatswissenschaften von Conrad-Lexis-Elster und Loening*, 3rd edit., 1910, vi, 714 ff., and the works quoted there.

[5] See P. Vinogradoff, "Folcland," *The English Hist. Review*, viii (1893).

[6] See my remarks in *Die ältere Sozial- und Wirtschaftsverfassung der Alpenslawen* (1909), 147 ff.

actual premises for these various interpretations are to be found not so much in the sources themselves as in those intellectual tendencies of which we have been speaking. If the latter disappear, or are to-day no longer applicable, the theory also loses a considerable part of its vitality. One has but to remember how differently modern philology now interprets the term *barbari*[1]; we now know that it does not mean savages or even enemies of culture. Remember, too, the mighty influence once wielded by the doctrines of Charles Darwin and of Morgan; they have been to-day almost abandoned by sociologists, for light has been thrown on the history of the family and of primitive culture which flatly contradicts them. Sociology, economics, and to some extent also jurisprudence have already, here and there, shaken themselves free from those earlier views, and have taken up quite a different attitude, especially concerning the development of land-ownership and the beginnings of society. Is it not time that the history of the so-called Middle Ages also took note of the logical consequences of all this newly acquired knowledge? A close observation will show us that many ideas which hold the field to-day are really based on foundations which are no longer fitted to bear such great edifices. The thriving science of civilization has thrown out new branches, especially pre-history and early German archæology; nor must we forget philology, which has now opened up much richer sources to us. Above all, the historical method is now demanding its rights. It is impossible in the twentieth century to judge the basis of European civilization, the events of the first to the sixth centuries A.D., from late medieval sources, especially the so-called *Weistümer*, or even from the observation of eighteenth-century conditions by unscientific practical administrators, or of modern systems by nineteenth-century surveyors. However valuable as auxiliaries of modern knowledge these criteria may have been or may still be, modern science will use such worm-eaten crutches only with great caution and in extreme necessity.

There are now enough sources of other kinds to be consulted, in contradiction to the former belief that there was not enough contemporary evidence for those early periods. We must try, with the help of pre-history and German archæology, to find new foundations which may make possible a more correct and confident evaluation of the Roman writers who have hitherto, despite their bias, been the main sources. The splendid results of late Roman excavations, which we owe chiefly to the admirable organization of the *Limeskommissionen*, the insufficiently appreciated work of the Roman and German museum in Mainz, finally the self-sacrificing and arduous activity of the numerous German archæological and historical societies—all these must be collected and seriously used for the treatment of these problems, and their historical consequences must be traced. They provide new means for arriving at a scientific knowledge of the basis of early medieval culture. Finally, the results of modern papyrology are also of great importance, not only because through them we have for the first time been enabled to learn something of the origins and connections of late Roman culture, but because we gain thereby more certain standards by which to judge the part played by the Germans in general cultural development. Early medieval civilization is no new phenomenon, the primitive culture of coarse barbarians, co-existing with or displacing that of a dying world which it destroyed. On the contrary, it is an organic and accurately fitted link in the chain of an ancient

[1] See below, Chapter III.

evolution, passing from one race to another, and it was to the best interest of each successor to share in previous achievements.

The nature of these new criteria will make possible the virtual exclusion of that subjective interpretation of ambiguous statements by foreigners about German culture, which was the main source of error in earlier scholarship. It will also reduce the legal records, hitherto considered the most important sources, to the second rank for this early period, since recent criticism has shown that they are not as old as they were once thought to be. Moreover, a drastic limitation of the scope and applicability of these sources, naturally based on the purpose and cause of their composition, and recognized repeatedly by recent legal historians, will now make it possible to interpret and use them much more freely.

Chapter II

THE SO-CALLED "EARLIEST" PERIOD (CÆSAR AND TACITUS)

THE study of every civilization must begin with an examination of the potentialities of its natural environment, since these form, as it were, the basis of its development. It is precisely in this respect that recent research on the so-called *Urzeit*, or earliest period of German history,[1] has produced revolutionary results, by proving the bases on which the old theory was built up to be untenable. It was an hypothesis essential to this theory that at the time when Germans and Romans came into closer contact with one another, Germany was covered with marshes and dense primeval forests.[2] Irrefutable evidence of this was found in the accounts of Cæsar and Pliny, from which scholars chose to draw their pictures of conditions at this time. But, in opposition to this view, students of prehistoric archæology, geography, and philology have now come to unanimous conclusions which give us a safe starting-point for critical examination.

It must, of course, be conceded that in prehistoric and early historic times Central Europe was much more densely wooded than it is to-day, and marsh and moorland were certainly more extensive. But earlier scholars have taken too little notice of the fact that besides the great forest regions, and beside marsh and moorland, there were also considerable unforested zones, which did not need to be cleared or broken up, providing places for settlement. These unforested regions were settled in the Stone Age, several thousand years before Cæsar or the beginning of the Christian era. Robert Gradmann, to whom above all we owe our knowledge of this important question, considers that one of the most surprising facts of prehistory is the "lack of any geographical progress in land settlement from Neolithic times throughout the Bronze Age and the Hallstatt and La Tène epochs down to the threshold of Roman times".[3] O. Schlüter, too, has been able to show from a detailed examination of Northern Thuringia, especially the regions of the Unstrut and Helme, that the extent of marshland was greatly exaggerated by early scholars, and that between the edge of the old forests and that of the ancient marshes there was a strip of unforested land, open and fit for agriculture, which had never been wooded.[4]

All the evidence for this new knowledge cannot, of course, be given in detail here. But an especially important and characteristic example of the inadequacy of the old theory of extensive marshes and primeval forests is provided by K. Schumacher's instructive evidence concerning the old cultural district of the Rhine plain of Baden. In 1902 Schumacher showed, from numerous

[1] I use the phrase "so-called earliest period" (in German *Urzeit*) for the period so described by economic and legal historians in general, since it is now realized that the true *Urzeit* of the Germanic tribes is much earlier. See Kossina, *Die deutsche Vorgeschichte* (*Mannusbibl.* ix), v, 62 (1912), and Hoops, *Waldbäume und Kulturpflanzenin Germanischen Altertum* (1905), 494 ff.

[2] See among others v. Wietersheim-Dahn, *Geschichte der Völkerwanderung* (2nd edit. (1880), i, 9). See also i, 77, 146.

[3] "Das Mitteleuropäische Landschaftsbild nach seiner geschichtlichen Entwicklung," *Geographische Zeitschrift*, vii, 374 (1901).

[4] *Die Siedelung im nordöstlichen Thüringen* (1903), 153 ff., 159 ff.

fresh excavations, that from the Bronze Age to the early La Tène epoch there was dry land in that district, which must have been densely settled.[1] Indeed, he thought it possible that the Rhine plain may in parts have been drier than it is to-day. Analogous observations have been made in the Rhine plain of Hesse, based on numerous prehistoric remains found in a line running through Lorsch, Hähnlein, Hahn, Dornheim, and Gross-Gerau. The size and density of this pre-Roman population, when we consider the extent of the excavated settlements, can be explained only on the assumption that large "nucleated" villages must have existed there throughout all periods. The different peoples, as they followed one another, obviously profited by the agricultural work of their predecessors, and the theory that they lived only in small bands or in scattered settlements is quite untenable. It is incorrect to suppose that these early peoples were at the lowest stage of civilization, wandering about in hordes through their endless primeval forests and hunting wild animals.

Making use of modern travellers' accounts of Africa and America, Ratzel had already remarked that primitive peoples follow the natural clearings along the banks of rivers and lakes and the borders of the primeval forest, but do not often penetrate far into the latter.[2] Johannes Hoops was right in stressing the fact that "the primeval forest is the enemy and not the friend of man; primitive man may make expeditions into the forest but will not settle permanently there".[3] In prehistoric times clearings for arable land were probably very seldom made on a large scale in forests, but the open land bordering thereon offered the conditions necessary for existence. "Here there is free movement, extensive pasturage, and the richest stock of game; our domestic animals, our crops and weeds and our whole civilization point to open lands as their home."[4] In 1920 E. Wahle discussed in a very full and penetrating manner "the natural basis of the settlement of South-West Germany in pre-Roman times", showing in detail the close connection of Neolithic civilization with geological conditions and plant distribution (moorland, black earth, loess areas). His latest essay "Germany in the New Stone Age" (*A. Hettner-Festschrift*, 1921, 9–18) gives a supplementary definition of the relationship between the geographical distribution of vegetation and the history of settlement. "The wanderers followed the clearings or bush-covered plains and the grassland, which was now beginning to appear."[5]

In addition, it should be observed that according to the statements of the Romans, the great forest regions of Germany were not impassable, as primeval forests would be. Cæsar himself tells us that a fast runner could cross the breadth of the great Hercynian forest in nine days,[6] and also that no German is to be found who, after sixty days' march, could say that he had come to an end of it.[7] The accounts of the battles of Varus against the Germans state that before the decisive battle in the Teutoburg forest the Roman army came to a "treeless plain",

[1] "Zur Besiedelungsgeschichte des rechtsseitigen Rheintales zwischen Basel und Mainz," *Festschrift zur Feier des 50 jährigen Bestehens des römisch-germanischen Zentralmuseums zu Mainz*, 16 ff.

[2] *Der Ursprung und die Wanderungen der Völker geographisch betrachtet, Berichte über die Verhandlungenden der sächsichen Gesellschaft der Wissenschaften.* Leipzig, Phil.-histor. Cl., 52, 55 ff. (1900).

[3] Op. cit., 91.

[4] R. Gradmann, *Pflanzenleben der Schwäbischen Alb.*, 2nd edit. (1900), i, 357.

[5] Id. *Ostdeutschland in Jungneolithischer Zeit.*, Mannus 15 (1918).

[6] *De Bello Gallico*, vi, 25.

[7] Ibid.

and the landscape described by Tacitus in his account of the battles of Germanicus shows similar features. The Roman legions repeatedly pass through the forest on long marches. Germanicus on one occasion considers which of two possible routes he should choose through a great forest region—the shorter which was more often used, or the less convenient, along which his advance would be more unexpected.[1] Repeatedly in Tacitus we find accounts of battles between large bodies of troops in the forest itself, in which there is mention of clearings and unforested areas,[2] or the cavalry seeks cover in the forest.[3] It is obvious that these extensive forests were regularly traversed and allowed the passage of large bodies of troops. Moreover, artificial earthworks had already been erected by the Germans in the marsh and forest lands; Tacitus, for example, mentions a broad dam or wall of earth which served as a boundary between the Angrivarii and the Cherusci.[4] The sources which deal with the battles between Romans and Germans in the third century give a similar account; thus Herodian, describing Maximus' campaign in the interior of Germany (c. 236–7), says that the Germans had withdrawn from the plains and treeless districts and had hidden in forests and marshes.[5]

Another great problem in the history of German culture is closely connected with these natural conditions of settlement. What was the stage of civilization reached by the Mid-European peoples, and more especially the Germans, at the beginning of the Christian era? For a long time, despite considerable objections, the statements of Cæsar and Strabo led many scholars to consider them as nomadic or at any rate semi-nomadic.[6] To-day this view may be regarded as definitely refuted, now that it has been attacked in so many excellent works by German historians, economists, philologists, and students of agrarian economy.[7] In France, too, where scholars under the influence of the older theories of Montesquieu and Voltaire were still inclined to look on the Germans as a race of low civilization, Fustel de Coulanges emphatically condemned the theory in 1875[8] and again in 1885.[9]

Since then scholarship has made still more considerable and important progress. To-day we know from prehistoric remains and from philological research that, throughout the centre and west of Europe, agriculture is not two thousand, but four or five thousand, years old. Even if the Indo-Germanic people did not live in Central Europe, as some recent scholars assume, but came into Germany from the East, this must have happened centuries before the arrival of the Romans, so that the Germans were certainly acquainted with tillage from the earliest times.[10] Agriculture was not a branch of civilization which appeared with the Romans; and the early German agrarian system was more highly developed on its technical side than used to be supposed. Not only were the Germans familiar with the use of the hoe, which recent research, in any case, no longer regards as a stage in the development of agriculture, but they already used oxen

[1] *Ann.*, i, 50.
[2] Ibid., i, c. 51.
[3] Ibid., ii, c. 19.
[4] Ibid., ii, 19.
[5] vii, c. 2, cf. v. Wietersheim-Dahn, op. cit., i, 189.
[6] See German edit. i[3], 57 f.
[7] See German edit., i[2], 58 (notes 23–9), 59 (notes 30–3).
[8] *Histoire des Instit. polit. de l'ancienne France*, i, 286 f.
[9] *Séances et travaux de l'Académie des Sciences Morales et Polit.*, vols. cxxiii and cxxiv.
[10] See especially J. Hoops, op. cit., 494 f. and Germ. edit. i[2], 59, note 37.

and horses for ploughing.[1] Moreover, it has been shown to be very probable that the wheeled plough was a Germanic invention and did not, as Pliny thought, originate with the Rhætians.[2]

These facts, which have been established by prehistoric research and comparative philology, must form the basis of our criticism of Cæsar and Tacitus, the Roman writers from whom early scholars derived their chief knowledge of conditions in the so-called "earliest" period of German history. It is no part of our purpose here to deal in detail with the great mass of commentaries on these two patriarchs of the literature of German civilization. In general, I follow the group of scholars who have thrown doubts upon their reliability, and especially upon that of Cæsar.[3] Also Cæsar's descriptions appear to me to relate to exceptional conditions, brought about by the German wars and migrations.[4] M. Much and especially Hoops have brought together a mass of archæological evidence (the continuity of settlements from the Neolithic and Bronze Ages down to historic times, the peculiar nature of prehistoric cemeteries, the number of cultivated plants, the system of manuring, reaping, threshing, grinding, and making grain into bread, also forms of worship and myths, etc.) which shows that the normal state of the Germans was one of peaceful and settled existence, and that agriculture must have played an important part as a source of food even at the time when the Indo-Germanic peoples were still sharing their common habitat.

In addition to the examples of corn-growing among the Germans, which are given by M. Much and W. Fleischmann,[5] certain passages in Cæsar may be cited, which indicate that they valued this form of agriculture very highly.[6] He tells us that he forced the Helvitii, who had left their land, to return to it, so that the Germans on the other side of the Rhine might not occupy the empty regions, and expressly attributes their migration to the excellence of the arable land. There is another passage to the same effect concerning the Belgae. Cæsar had heard that they were partly people of German race who had crossed the Rhine in very early times, and settled down there, after driving out the Gauls. Here, again, he gives the fertility of the soil as the reason for their change of settlement.[7] These passages prove the correctness of Hoops' theory that we must "think of the spread of the German tribes not merely as war-like campaigns, but as slow migrations by stages, with shorter or longer pauses for rest and settlement".[8]

Early scholars were not content with deriving from Cæsar the view that the Germans were nomads; they thought they could also conclude from his account that there was no private property, but only a communal system of land-ownership. Two often-quoted passages seem to make this probable. In *De Bello Gallico*,

[1] See J. Hoops, op. cit., 499 ff., and the article "Ackerbau" in the *Reallexicon der Germanischen Altertumskunde*, 1911; Schrader also finally adopted this theory, see *Sprachvergleichung und Urgeschichte*, 3rd edit., 1907, ii, 208.

[2] R. Meringer, "Wörter und Sachen." *Indogermanischen Forschungen*, xvi, 185 f.; xvii, 109 f. (1904); J. Hoops, "Ackerbau"; R. Braungart, *Die Urheimat der Landwirtschaft der indogermanischen Völker* (1912), 119; G. Kossina, *Altgermanische Kulturhöhe. Sal. aus den Nornen*, 1918, 18.

[3] See Germ. edit., i², 60, n. 40.

[4] See on the former J. Hoops, *Waldbäume*, 516 ff., and the literature quoted by him, and on the latter v. Wietersheim-Dahn, op. cit., i, 45.

[5] *Journal für Landwirtschaft*, li, 91 f. (1903).

[6] *De Bello Gallico*, i, 28.

[7] Ibid., ii, 4; O. Th. Schulz, "Über die wirtschaftlichen und politischen Verhältnisse bei den Germanen zur Zeit Cäsars," *Klio*, xi, 77, (1911).

[8] *Waldbäume*, 517.

iv, 1, it is said of the Suevi, *Privati ac separati agri apud eos nihil est*, and in vi, 22, of the Germans in general, *neque quisquam agri modum certum aut fines habet proprios*. But the absence of private property among the Suevi is fully explained if relays of them were constantly alternating work in the fields with military service, so that they never tilled the land in one place for more than a year at a time. Moreover, the second passage shows the true state of affairs still more clearly. It agrees with the first in the decisive point that the Germans changed their fields every year. Here, however, the absence of private property, referred to above, is more clearly explained: *sed magistratus ac principes in annos singulos gentibus cognationibusque hominum quique una coierunt, quantum et quo loco visum est agri, attribuunt.* The distinction here is not between collective property and private property, but between public land-ownership and (non-existent) private property. The representatives of the public authority allot the usufruct of the soil to particular bands of settlers, apparently with a time limit. The property itself (if it can be so called in view of the short time that it might be used) is vested in the political authority, not in the communities using it. In spite of the annual change of place of agriculture, Cæsar's statements may also be interpreted as indicating private tillage and private usufruct. The farthest we could go would perhaps be to speak of a "state-socialism",[1] naturally brought about by war conditions and peculiarly suited to them. Another passage in Cæsar may be mentioned in support of this. At the end of his famous description he gave reasons which should serve to explain these agrarian conditions.[2] They show clearly that the Germans must have been well acquainted with private ownership, but must have tried to hold it in check on account of its evil social and political consequences. A specially important motive for their action is stated to be their anxiety to maintain their military prowess. To-day, after the misery of a long world war, such a state-socialism is perhaps better understood than it could have been earlier, when there were no analogies before the eyes of scholars.

Moreover, it must always be borne in mind that this description was written not only by a Roman, but for Romans, and that the writer is not an historian, but a statesman, whose own social and political views and designs on his readers must have influenced his writings.[3] The final sentence is quite in accord with the democratic and social plans of Cæsar during the first Triumvirate, with regard to the division of arable land and his opposition to the aristocracy (A.D. 59).[4] Some scholars have already expressed their view that this passage gives Cæsar's own reflections, rather than genuine statements by German witnesses.[5] Nevertheless, such an analysis of the intentions underlying Cæsar's book itself shows that there must have been social distinctions among the Germans, (the common man is contrasted with the *potentissimi*) [6] and further, that these distinctions were already expressed in different conditions of land-ownership.

Finally, the peculiar characteristics of the people should not be overlooked. Cæsar describes the Suevi very vividly; the individual acknowledges no discipline or subordination to another's will; he follows his own inclination

[1] See Heinr. Ranke, "Über Feldmarken der Münchener Umgebung und deren Beziehung zur Urgeschichte," *Beitr. zur Anthropol., und Urgesch. Bayerns*, v, 19.
[2] De Bello Gallico, vi, 22.
[3] See on this point, A. Klotz, *Cäsarstudien* (1910), 25.
[4] See W. Drumann, *Geschichte Roms*, 2nd edit., iii, 182 ff. (1906).
[5] See W. Fleischmann, op. cit., 92 ff.
[6] O. Th. Schulz, op. cit., 66.

in all his actions.[1] This is hardly reconcilable with a strictly communistic life or strong social coercion.

The reconstruction of early German conditions was based, not only upon Cæsar, but also upon Tacitus. Scholars have tried as far as possible to bring the descriptions in the *Germania* into accord with those of Cæsar, writing 150 years earlier. Differences were explained either as a later development, or as misunderstandings or corrections of his predecessor.[2] Nevertheless most recent scholars have been inclined to assume that the Germans were already settled in Tacitus' time; but they have not been in agreement as to the detailed interpretation of the famous passage in chapter 26, because the doubtful meaning of the words made it possible to read into it conditions which seemed appropriate to later developments, or even some which were still non-existent. To-day new and important criticisms may be added. The recent investigations of E. Norden have very considerably decreased the value of the ethnographical descriptions in the *Germania*, by showing that it has apparently been subjected to a kind of typological treatment: "the statements of one observer about a certain tribe were transferred by another to another tribe."[3] Norden has established a number of similarities not only with the ethnography of Herodotus (especially concerning the Scythians), but also with Ionic ethnography, as recorded by the unknown author of a fifth-century climatological work preserved among the writings of Hippocrates.[4]

This evidence seems all the more important, because numismatologists have already proved that the well-known and oft-quoted passage about German currency must have been taken from an older source, or at any rate can no longer have been applicable to that time.[5] Here once more the warning, originally given by Fustel de Coulanges,[6] must again be emphasized. In order to arrive at a proper understanding of Tacitus, we must proceed from Roman, and not from later German, conditions. The solution of our difficulties perhaps lies in the fact that he is always making an implicit comparison with the Roman situation. Furthermore, Johannes Hoops came to a very similar conclusion, although he was probably unacquainted with Fustel's work.[7] Coming from two different quarters this identical opinion may be regarded as significant. It is true that Hoops, although he interpreted some words (e.g. *agri*) more correctly than Fustel, allowed himself to be much influenced by legal theories based on late documents. The Mark-association (*Markgenossenschaft*) theory is taken as proved, and is attributed to Tacitus, although there is no mention in his work of the "Mark" in the technical and legal sense. The *agri* of Tacitus can hardly be identified with the "Mark", for he states that they were divided at once, not into equal parts, but *secundum dignationem*. This is not compatible with the character of the Mark-association assumed by the jurists. Therefore we cannot translate *universi* as Mark-associates, as Hoops continues to do; in my opinion it has a much more restricted meaning and too much must not be read into it, especially not facts of which the existence has yet to be proved. If Tacitus had wished

[1] *De Bello Gallico*, iv, 1.
[2] H. Delbrück, *Geschichte der Kriegskunst*, i³, 17 f.
[3] *Die Germanische Urgeschichte in Tacitus' Germania* (1920), 56.
[4] Ibid., 48 ff.
[5] R. Forrer, *Keltische Numismatik der Rhein- und Donaulande* (1908), 137.
[6] *Séances et travaux*, op. cit., cxxiv, 16 ff.
[7] *Waldbäume*, 521 ff.

to speak of common property, or even only of co-aration or communal cultivation, he would certainly have expressed it otherwise, by *commune* or some word of that kind. *Universi* is chosen rather with an eye to Roman conditions, and gives good sense as an antithesis to these. It is not individual owners, like the rich Roman landed proprietors, who possess the *agri*, but all have a share in them. Among the Germans there is no exclusion, like that which caused such misery and inequality among the Romans. In order to understand this sentence of Tacitus we must refer to Columella's account,[1] which also shows the exact determination of quantity (*pro numero cultorum*) in its right light, and at the same time is a very strong argument against the interpretation of *universi* as Mark-associates with communal land holdings. If that interpretation were correct, then the number of cultivators would not have to be specially considered at all, since all would have equal rights and individual portions would not be separated from the rest. The statement that the division was made according to the importance of each individual, fits in well with the fact that the number of settlers was taken into consideration. If a division of land had to be made and if it were not carried out in equal portions, then the number of settlers must from the beginning have determined the size of the district to be settled. Otherwise some would have gone short or had no share at all, if there were not enough land over.

The sentence which follows, too (*facilitatem partiendi camporum spatia praebent*) is the logical continuation of this line of thought. It can be interpreted only in the sense of a genuine division and is therefore further evidence against the theory of uniform communal landownership. It also indicates that Tacitus was thinking of a comparison with Roman conditions, for the Romans actually did experience such difficulties, since their land was already largely divided up into private properties.[2] It should be observed that earlier, in the first sentence of the same chapter, the contrast with Roman conditions obviously influenced Tacitus' description—*fenus agitare et in usuras extendere ignotum.* Thus it is very probable that the intervening account of the occupation of the *agri* contains an antithesis to the agrarian procedure which was well known and usual among the Romans.

If the difference between Cæsar and Tacitus is to be explained by the fact that the former is describing an exceptionally restless situation caused by war, and the latter a peaceful and stable period of settlement, then in Cæsar's day private property could naturally have had no opportunity to develop, and according to his statement, it was the object of the political authorities of the time to prevent it from doing so. But here, as Hoops has correctly emphasized, "permanent arrangements and a regular rotation are referred to." Permanent settlement must therefore have had within it the seed from which private property might develop. There would appear to be no foundation for the theory that Tacitus' account also implies that dwelling-places and settlements were still changing. The only foundation for that theory is the word *invicem* used by Tacitus in the oft-quoted passage about the occupation of the *agri.* It is the chief difficulty of interpretation and has given rise to the most varied conjectures. Some have even thought that the word was a later gloss to make better sense or

[1] *De re Rustica*, i, 3.

[2] Tacitus also hints at this in the following chapter (xxviii), where he describes how the Gauls once advanced over the Rhine into Germany and began to make settlements there.

to give a more simple explanation of the facts.[1] Indeed only one thing seems to have been omitted, and that is a strict philological interpretation of the text itself. Because Cæsar in an analogous passage uses *invicem* to mean "in turn", the word was without further ado given the same meaning in Tacitus, whereas it obviously ought to be interpreted only in the sense in which that author customarily uses it, and not according to its meaning anywhere else.

Invicem occurs fairly often in Tacitus. As far as I can see, he does not use it in the sense of exchange or rotation, but with the meaning "mutually", with special reference to relations between two parties.[2] Where Tacitus wishes to express a change of settlement or dwelling-place, he often uses the word *mutare* or *permutare sedes*.[3] The reading *in vices*, preferred by some editors and again stressed by recent critics, is inappropriate here, because the translation "to cultivate alternately" does not correspond to *in vices occupare*, and a similar usage is to be found nowhere else in Tacitus.[4] *Occupare* here refers to land-occupation, the seizure of dwelling-places,[5] legally the appropriation of anything. It must be emphasized that the *occupatio agrorum* is a definite technical term used by Roman surveyors [6] and well known to every cultured Roman, because of its great importance in agrarian laws, even as early as the time of Licinius Stolo.[7] According to Roman law permanent landed property is acquired by means of occupation. *Agri* means something more than arable land, or cultivated land, or cultivatable land; it is the whole district of settlement, including uncultivated patches and waste land. The reference, therefore, is not to change in the individual arable fields, which would be cultivated one after the other in the series, but to the first possession, the appropriation of land that was previously ownerless or uninhabited. As we have seen, Tacitus wanted to suggest to his readers the very opposite of the Roman *occupatio*. Land among the Germans was appropriated by all, not merely by individuals, and mutually, i.e. not to the personal enrichment of a few. Each for all and for the help of all. This theory has recently received confirmation from the investigation of E. Norden. If it is known that Pliny was the model for these passages dealing with German rural economy,[8] we can well understand this antithetic reference in Tacitus to the rapid growth of the great estates, which he saw before his eyes, and which Pliny had regarded as the ruin of Italy (*latifundia perdidere Italiam*). When Hildebrand pointed out the impossibility of those interpretations which referred *invicem* to the change of the whole settlement area (*Feldflur*), he made the acute comment that *invicem* expresses a mutualness or reciprocity, and therefore could refer only to persons, not to things.[9]

The older theory that Tacitus was speaking of a change of the settlement area appeared to receive support from another sentence which occurs after the

[1] See R. Hildebrand, op. cit., 1st edit., 118 ff., 2nd edit., 112 ff., and in general, Müllenhoff, *Deutsche Altertumskunde*, iv, 366 (1900).

[2] For example, *Germania*, c. 18, 21, 22, 37; Agricola, c. 6, 16. 19, 24, 37; *Histor.*, i, c. 65, 74, 75 etc., also Müllenhoff, op. cit., 339.

[3] For example *Germania*, c. 2, and 28.

[4] See Gerber and Greef, *Lexicon Taciteum* (1903).

[5] See for example Agricola, c. 11; and the remarks thereon of Waitz, *V.G.*, i[3], 143.

[6] See Rudorff, *Röm. Feldmesser*, vol. ii, Register.

[7] See for example Livy, *Hist.*, vi, 37. "agros occupandi modum."

[8] *Die german. Urgeschichte in Tacitus' Germania* (1920).

[9] *Recht und Sitte a.d. verschiedenen wirtschaftlichen Kulturstufen.* (1st edit.), 119; 2nd edit., 113.

account of the division of the *agri: arva per annos mutant et superest ager.* This was thought to be an interpretation of what had gone before and scholars tried to explain it as such.[1] As a matter of fact, the conceptions *arva* and *agri* must be kept apart. *Arva* means the land already under cultivation, the cornfields; this is the narrower conception, and merely a part of the *ager.* With this remark Tacitus passes on to something different, i.e. an account of the German agricultural system.

This passage has also given rise to various interpretations. Many scholars thought that it referred to the three-field system,[2] but that has already been contradicted.[3] Most recent works have been ready to assume that it refers to the wild field-grass husbandry (*Feldgraswirtschaft*), under which only a small part of the whole arable area (*Feldmark*) was tilled, while the greater part remained fallow and was used for grazing.[4] W. Fleischmann has recently opposed this view, in my opinion, quite rightly; he argues that this cereal cultivation has been wrongly described as a " wild ", i.e. entirely unregulated, field-grass husbandry, for according to Tacitus there must have been a well-regulated system of agriculture, and there must, moreover, have been considerable local differences, caused by the natural conditions of the soil and the countryside.[5]

My own opinion is that Tacitus' remarks are to be interpreted in the sense of a field-grass system rather than a three-field system; for *superest ager* probably means only " there is still some land over; all the land is not cultivated and used ".[6] To take this as implying the existence of a definite fallow period, occurring in regular rotation, is to read too much into the passage; moreover, it does not conform to Tacitus' accustomed phraseology. When Tacitus says that enough uncultivated land [7] still remains, he wishes to draw a contrast between the extensive type of farming in use among the Germans and the intensive Roman type. This is also shown by the succeeding remark: *Nec enim cum ubertate et amplitudine soli labore contendunt, ut pomaria conserant et prata separant et hortos rigent: sola terrae seges imperatur.*

It has been sufficiently proved that the changing rotation of portions of land (*arva*) which are sometimes tilled has nothing to do with a change of settlements. The latter are to be thought of as permanent and enduring. A division of the whole settlement district seems to have been already effected *secundum dignationem.* The language of the source itself shows that this does not imply an equalization of good and bad lots of arable land. *Dignatio* is rank, social position.[8] Tacitus' description definitely contradicts the theory that the Germans all had equal rights to the land.[9] This interpretation is supported by the next sentence, stating that the great extent of the land at their disposal made this division an easy matter (*facilitatem partiendi camporum spatia praebent*). Attention has been called to other statements of Tacitus, which would be equally incomprehensible if the whole land had been common property, the individual receiving only a temporary

[1] See H. Delbrück, op. cit., ii[2], 17 f.
[2] See Eichhorn, op. cit., 14*a*, note *e*. Landau, *Territorien* (1854), 52 ff.
[3] See the bibliography of special treatises on this matter in Müllenhoff, *Deutscher Altertumskunde*, iv, 374 ff.
[4] *Abhandl. der Berliner Akademie*, (1863), 14 f. (=*Agrarhistorische abhandl.*, i, iii).
[5] *Journal für Landwirtschaft*, lix, 233.
[6] See J. Hoops, *Waldbäume*, 522, n. 4, where controversial works on this subject are mentioned.
[7] *Ager* is used here, not *Arva.*
[8] See *Germania*, c. 13.
[9] See also Müllenhoff, *Deutsche Altertumskunde*, iv, 369.

usufruct. He lays special emphasis on the separate character of the settlements. There was not only a complete lack of collective life in cities, but also all dense colonies were avoided.[1] The settlements stood apart from one another and their lay-out varied with the site and the lie of the land.[2] It should perhaps be observed that here Tacitus uses the singular (*ut campus placŭit*), while in the passage discussed above, where he speaks of the division of the whole settlement district, he uses the plural; as the former is intended to express abundance, so in the latter the idea of separateness may be accentuated by the intentional use of the singular.

The Roman then (Chapter 5) emphasizes the independent settlements of the *servi* (*suam quisque sedem, suos penates regit*). Another passage in favour of the existence of private ownership refers to the Chatti. Tacitus describes their extraordinary valour and vigorous prowess in war, and emphasizes as a special characteristic that *Nulli domus aut ager aut aliqua cura* (Chapter 31). Plainly, therefore, the opposite was the general rule. In conclusion, attention may be called to another passage from Tacitus, which has not hitherto been used in dealing with this problem. In describing the battles with the Germans under Nero (A.D. 58) he relates that the Frisians intended to extend their settlements as far as the Rhine. They occupied the empty regions reserved for the Roman legionaries on the right bank of the lower Rhine and made their homes there. In order to explain this, Tacitus uses these words: *Iamque fixerunt domos, semina arvis intulerant utque patrium solum exercebant.*[3] He must have considered the legal conception of hereditary (paternal) landownership to be compatible with the agrarian system of the Germans, since he uses it in antithesis to the arable land of strangers.[4] For all these reasons I hold that already in the time of Tacitus private property in land existed among the Germans.

The problem of co-aration or communal cultivation (*Feldgemeinschaft*) is closely connected with this important question. For if there was no private property in land and if communal ownership was the rule, then it would be only rational to conclude that some form of co-aration, in which the whole community took part, ("strict" communal cultivation) existed, or to assume that there was at least some uniform plan of agriculture, devised by all the full members of the community and binding every individual to the same type and routine of cultivation ("loose" communal cultivation or *Flurzwang*).

To begin with it should be observed that these theories about the early period are not based on contemporary sources and are purely arbitrary reconstructions from much later accounts. Moreover, they presuppose conditions which must have been extremely difficult from the point of view of technical farming. Whole peoples or Gaus are supposed to have practised communal cultivation in the time of Cæsar! But think what this would have meant in practice. They would have been farming on a scale which would entirely contradict Cæsar's clear statements about the neglect of agriculture. It would have involved a most complicated usufruct of the soil and a highly elaborate organization. As an agrarian writer of repute has observed with truth, "most of those who

[1] *Germania*, c. 16. [2] R. Hildebrand, op. cit., 1st edit., 107; 2nd edit., 106.
[3] *Ann.*, xiii, c. 54.
[4] Here he was not merely displaying a Roman attitude of mind without regard to German peculiarities, as we see from the reservation made by him in this connection, when referring to another legal conception (*rex, regnari*). He says: "The leaders of this undertaking were Verrit and Malorich, the kings of the tribe, as far as one can speak of kings among the Germans." Procopius (*Bell. Vandal*, i, 22) speaks similarly of the Vandals: γῆς τῆς πατρώας.

dealt with Cæsar's narrative, knew nothing whatever about farming. And we cannot expect them to be able to judge what is possible and what impossible in the matter." [1]

Experts such as J. J. Möser have expressed grave doubts about Cæsar's statements, and the *Gehöferschaften* of Trier, which used to be quoted in support of the old theory, have recently been proved to be a later development of seigneurial origin, like the oft-quoted Russian Mir, or other associations for communal cultivation such as those in India.[2] The fundamental theory of earlier scholars that communal cultivation was the form of farming practised by free and equal co-sharers in communal property, has been swept away,[3] for it has become clear that it is rather the product of seigneurial compulsion and of seigneurial interests. Even if Cæsar's account were to be interpreted in the sense of communal cultivation, it would have to be explained as being the result of seigneurial caprice, for he says expressly that the *magistratus ac principes* undertook the division of the land and compelled a change after a certain lapse of time: *transire cogunt.*

It is interesting to note the reasons which already in the last part of the eighteenth century led J. J. Möser, who looked on the Westphalian system as primitive and thought that the original economic conditions of the earliest period survived in it, to declare categorically: "What Cæsar says about the ancient German peoples can never have been true here." [4] The old German system of Cæsar seemed to him to be "artificial", and its unsettled condition to be quite incompatible with the demands of individual farming in his homeland. "For no families have joined together here; heath, sand, moor, and mountains, which form the main part of our bishopric, demand a preparation of years of continuous cultivation and no changes of this kind."

The account of Tacitus is still less compatible with the existence of co-aration. The information that division occurred *secundum dignationem* excludes the possibility of communal farming, as does the express mention of individual farming by *servi* and *coloni* in Chapter 25 of the *Germania*. The division of the land among the *cultores* must have been different.[5]

Not only is it impossible to assume that communal cultivation or co-aration in the strict and genuine sense existed among the Germans in the time of Cæsar and Tacitus, but even the presence of a less extreme form of compulsion to a common routine has not yet been actually proved. The sole reason for this theory lay in a technical consideration. A common routine (*Flurzwang*) was inferred by indirect and *a posteriori* reasoning from the scattering of the strips forming each holding over the whole area of the different arable fields of the village. It was argued that this method of distribution, on account of the difficulty of access of individual owners to their different plots or strips, pre-supposes *ex hypothesi* an harmonious economic plan and similar agricultural processes. But this apparently convincing argument is conclusive from the technical point of view only if it be proved that there were no field paths within the arable fields (*Feldmarken*). The intermixture of holdings is by no means peculiar to German

[1] W. Fleischmann, op. cit., li, 98 (1903).

[2] See A. Tschuprow, "Die Feldgemeinschaft" (*Abhandl. aus dem Staatswissenschaftlichen Seminar Strassburg*, xviii), 112 (1902).

[3] Fleischmann, op. cit., lix, 226 f.

[4] *Osnabrückische Geschichte*, 2nd edit. (1780), vol. 1, 7 f.

[5] See Wittich., "Die Frage der Freibauern," *Zeitschrift der Savigny Stiftung f. R.G. Germ.* Part xxii, 259.

agrarian conditions. It appears, for instance, among the Romans,[1] and there also it did not prevent development of extensive individual farming; they also had field-paths. But so, too, did the German peoples in early times; such paths can be found in excavations belonging to the prehistoric period,[2] and as soon as a body of relevant historical sources, in the narrower sense, becomes available, evidence of field-paths may be found also in them (e.g. in the so-called Barbarian codes). Thus the *Flurzwang* common routine theory ("loose" communal cultivation) loses its main prop. For the periodical re-allotment of the whole or part of the arable area (*Feldmark*),[3] which has been adduced in its support, could be proved only by reference to the so-called *Gehöferschaften* of the Trier district; and it has been shown that these are associations formed under compulsion at a later date, and not a survival from the earliest period.

But it may be objected that a common routine is found in the three-field system. No one will wish to contradict this; but it has been proved by expert agrarian writers that this system cannot possibly have been invented and introduced by free peasants, but owes its origin to seigneurial interests and power.[4] Thus we see that the "evidence" on which the older theories were based consists of incorrect or untenable hypotheses. The complete unreliability of these earlier views is shown by the incompatibility of the various authorities who ought to support one another. It was assumed from Cæsar, and even to some extent from Tacitus, that in the so-called primitive period the settlement sites changed continually. The Germans were forced to advance (*transire*). But in analogous cases from a later period, which are supposed to be survivals of this practice, this was by no means the case. Among the *Gehöferschaften* of Trier, the Scottish communes, the Russian Mir, etc., a re-allotment of the various strips certainly does take place, but it does so within a definite seigneurial estate, the boundaries of which remain unchanged. Moreover, the *Gehöferschaften* of Trier are chiefly found where there is waste land. It is certainly no accident that such re-allotment and rotation of strips are found on the Hundsrück and in the Scottish highlands. It can hardly be maintained that they were the homes of a specially strong and independent peasantry, who were able to preserve primitive forms of agriculture. The seigneurial authorities, at whose command this rotation took place, had a technical and financial interest in arranging it, in order to equalize the productive power of the peasant-tenants and of the farming itself. The possibility that the *Gehöferschaften* originated later as compulsory associations was hardly considered by earlier scholars, although they were using sources belonging to the later period and of manorial origin.

Even to-day most modern scholars look upon the Mark-association as the basis of the early German economic system, and, at the same time, as the main support of communal cultivation.[5] This theory goes back to J. J. Möser, who thought he saw survivals of primitive times in the "Marks" of his Westphalian homeland. The point of departure and the foundation of Möser's views was the private ownership of separate homesteads, which caused him to deny the validity of Cæsar's statements so far as Westphalia was concerned. As a matter of fact

[1] See the more detailed discussion in Chapter V.

[2] See Matt. Much, "Über den ackerbau der Germanen." *Mitteil. der Anthropol. Ges. in Wien*, viii, 272, on the mountain cultivation (*Hochäcker*) in the marches of lower Austria.

[3] O. Gierke, *Deutsches Genossenschaftsrecht*, I, 64.

[4] See W. Fleischmann, op. cit., lix, 227.

[5] See above, p. 6 ff.

neither Cæsar nor Tacitus, nor any other Roman writer, gives us any information whatsoever about Mark-associations among the Germans. This is all the more surprising if, as the legal historians held, such associations played a great part in the economic and social system of the earliest age, the *Urzeit*, of which they were supposed to be the real foundation,[1] and when on the other hand Cæsar, and still more Tacitus, emphasizes anything which is peculiar to the Germans and different from the Romans. Again, it is hard to reconcile the Mark-associations with Cæsar's description of the specific German agrarian system, for the Mark-association also pre-supposes a permanent site. Had there been a constant change of settlement, the Mark would have been continually liable to change; any cultivation, or clearance, encroachment of outsiders, in short, all the legal characteristics which this theory attributes to the Mark, would have been impossible. The single families or Mark-associations would have been continually obliged to occupy new Marks, and to begin their work all over again at the point reached before the compulsory interruption of their settlement.

It is otherwise with Tacitus, since, if in his time settlements were permanent and only arable land within the Mark was changed in rotation, the objection would no longer hold good. But why should Tacitus omit his otherwise beloved antithesis between German and Roman conditions, at the very point where the most important characteristic was to be described? The reader will at once recall the passage discussed above, where Tacitus says that the occupation of the fields was carried out *ab universis*. This is precisely one of the most important pieces of evidence for the whole Mark-association theory.[2] It has already been pointed out that Tacitus' account of the division of land among individual settlers, which followed a general occupation, is in complete opposition to the assumption of a system of common ownership by Mark-associates within the Mark.[3] It is moreover incompatible with what he says elsewhere about German methods of settlement and agrarian economy.[4] Its nature and purpose is the separation of individual settlements, a tendency to agrarian individualism which extended even to unfree tenants, to the great surprise of the Romans. Thus it was the exact opposite of that communal cultivation which is supposed to have been brought about by the institution of the Mark.

In the oldest historical documents which tell us about the connection between the associated settlers and the undivided Mark, it is quite clear that private ownership of the arable land involved as its perquisite a share in the Mark. The most ardent supporters of the old Mark-association theory have had to acknowledge this fact.[5] Each associate possessed not a free but a limited right of use in the Mark, and that right varied according to the size of his private holding in the arable land. The village-Mark could not be granted and handed over to the associates without a clear understanding of the nature of their claims. In particular, there was a close connection between the woods and the arable fields, as we also learn from the numerous decrees against clearing which occur in the *Weistümer*, on which, on other occasions, the Mark theory is fain to rely as irrefutable evidence for early conditions.[6]

[1] O. Gierke, *Deutsches Genossenschaftsrecht*, 60 ff.
[2] See above p. 35 f.
[3] See also R. Hildebrand, op. cit., 1st edit., 123.
[4] See above, p. 40 f.
[5] See H. Wopfner, "Beitr. zur Geschichte der ältere Markgenossenschaft." *Mitteil. d. Instit.*, xxxiv, 9 (1913).
[6] See Wopfner, op. cit., 733.

Clearly, the natural conditions of the soil and the technical difficulties of farming caused by its inequalities, must from the very beginning have imposed natural limits on the rotation of arable fields (*arva*), and must in actual fact have prevented these from being moved step by step throughout the whole area of the Mark.[1] It must often have been impossible to clear the latter completely. Therefore, the use of cultivable land in rotation, so far as it went, corresponds to certain agricultural systems still found in some European districts to-day, where a field-grass system, or convertible husbandry, has survived because it suits natural conditions.[2] There is, however, no reason in the former case any more than in the latter, to assume a Mark-association or any similar system of management.

As research into economic history went deeper and as more consideration was given to the technique of farming, it became less possible to retain the old Mark-association theory. A study of Tacitus shows that beside the communal cultivation of a Mark by an associated village according to a fixed routine (*Flurzwang*), there were districts in which each landowner must at an early stage have possessed clearly defined and separate arable land and pastures, and must therefore have had a little Mark of his own, which he could farm freely from a homestead erected by him where he thought fit.[3] It is precisely this co-existence of individual and communal cultivation, which must be assumed from Cæsar and Tacitus, which upsets the old Mark-association theory, for the economic conditions of existence would have been so unfavourable to the individual peasant farmer within the Mark-association that each associate would have tried to get out of it as soon as possible. There would be obligations and hindrances to free economic activity on every side, in colonization itself, in the choice and management of the single *Hufe*, in the routine of cultivation, and above all in the possibility of any extension of these activities. Finally, there is the law of inheritance; hindrances here would have frustrated all desire, at least on the part of the relatives of any farmer, to exert their personal strength on their own behalf.

There seems to be no historical justification for the advantage which has been ascribed to the Mark-association by its supporters, namely that it offered protection to the individual in times of economic need and oppression. The Mark-association was as powerless to hinder the encroachment of outsiders as it was to prevent any of its own members from losing their economic independence. The development of manorialism and the disappearance of common freemen are striking evidence of this. Even within an economic union of free farmers with equal rights, that particular type of communal farming would have been nothing but a premium on economic backwardness and inferiority. This would not apply at all to a union of the manorial type.

As a basis for the old Mark-association theory, therefore, only those arguments now remain which have been urged by legal historians from certain forms of later German law, i.e. limitations by the community of the individual right of disposal over his land, and an eventual right of inheritance vested in the community. It was thought that these could be explained only by assuming that—though they were only quoted in later references—they were survivals from primitive times, which therefore pre-supposed a common ownership of all associates in the settlement of the Mark. The chief fault of the legal historians (comprehensible in the time

[1] See my book, *Die ältere Sozial- und Wirtschaftsverfassung der Alpenslawen* (1909), 6, and especially 117 f.

[2] See G. Hanssen, *Agrarhistor. Abhandl.* 1, 132 ff.

[3] See G. Hanssen, op. cit., 1, 148.

of Darwin) was that they tried to find definite stages of development everywhere, even in the comparatively short period of historical certainty. To-day comparative archæology deals with widely different and much longer periods when trying to explain such developments, and it is, moreover, no longer possible to take the easy line of treating everything which appears strange and antiquated as a survival from the earliest times. Above all, the sociological method has shown that many legal and economic phenomena are not peculiar to any one people, but are a regularly recurring feature of certain economic organizations, by whose interests they are conditioned and produced. We have to ask ourselves whether those characteristics of German private law are really primitive German characteristics, or capable of another explanation. Later, in dealing historically with the whole economic organization, it will also be shown that the two main supports of the Mark-association theory, the right of inheritance enjoyed by *vicini* in King Chilperic's Edict, and the right of the associated villagers to veto the settlement of outsiders (*Lex salica, Tit. de migrantibus*) are not specifically German, but have analogies, and probably precedents, in Roman (*iuncto*) and Greek (*ἐπιβολή-προτίμησις*) law.[1]

Here we must examine only the social basis of the Mark-association theory. One of its fundamental hypotheses is that the German peoples in the earliest period, the so-called *Urzeit*, which scholars tried to reconstruct from Cæsar and Tacitus, were for the most part free associates with equal rights. This view was not really based upon documentary evidence, but upon general theories formed under the influence of the peasant emancipation movement, the French Revolution and the wars of Liberation, and finally under the influence of Romanticism. Etymology has also played its part; in particular the name Frank, which was interpreted as "free", seemed to be irrefutable evidence, as did the emphasis laid by Cæsar and Tacitus on *libertas*. The legal theory which still holds the field denies, therefore, that manorialism (*Grundherrschaft*) was already in existence among the Germans in Tacitus' time, and regards it rather as a later development in the period which followed the age of migration. Now in my opinion two distinctions must be carefully made in dealing with this important question. I consider that the existence of manorialism must be unconditionally admitted; it can be deduced from the accounts of Cæsar and Tacitus. At that time there were undoubtedly estate-owners who did not manage their property alone but employed others, especially half-free or unfree men, for the purpose. The description in the *Germania* of the striking difference in the German and Roman use of *servi*, the German *servi* farming quite independently and serving at a fixed rent like the *coloni* (Chapter 25), is positive evidence for this; and so is the oft-quoted description of the German warriors, who in time of peace did little except hunt, and preferred to leave their farm-work to others (Chapter 15). If we add this picture to the passages already quoted about land-occupation and division, *secundum dignationem*, it seems to be quite irrefutable that manorialism was already in existence at that time. But though these facts are undoubtedly established by the sources, they must not be generalized; we must not go too far in deducing from them the theory that the free German of Tacitus' time was not an independent peasant-farmer but a small landlord, who lived mainly on the dues of his settled bondsmen.[2] As a generalization, this picture of idlers given up to games and

[1] See below, Chapter V.

[2] See Wittich, *Zeitschr. f. RG.*, xxii, 252. Also his disciple F. Gutmann, *Die soziale Gliederung d. Bayern zur Zeit d. Volksrechtes* (1906).

drinking, and sometimes light-heartedly pledging their freedom, is certainly incorrect. These assumptions have already been attacked from various quarters, but chiefly on the basis of documents drawn from the later Frankish period; and it would thus be possible to avoid the difficulty by referring to a much earlier development. It is therefore necessary to examine Cæsar and Tacitus in greater detail in order to discover the conditions of that time.

To begin with, less importance should be attached to the general fact that Tacitus lays such emphasis on the freedom (*libertas*) of the Germans.[1] This might also be differently interpreted; there were certainly a great number of slaves or unfree men at that time. Further, I should not care to attribute such an important role in agriculture to women, for the high regard for women which Tacitus describes so impressively, is hardly compatible with the picture of an agricultural drudge of the Indian type.[2] Even assuming that the number of German landlords in the time of Tacitus (to-day we date the German *Urzeit* quite differently) was considerable, it is certainly incorrect to say, firstly, that all common freemen were landlords in this sense, and secondly, that they lived entirely on the dues of their tenants. In the later Carolingian period the free German commoners were often landlords and working farmers at the same time. The coexistence of these two phenomena, and their coincidence in one person, must not be overlooked.

In the accounts given by Cæsar and Tacitus, we must not forget their intentions with regard to the reader, and their desire for artistic effect. This certainly influenced their details, and no doubt explains the remarkable contradictions in the descriptions. Besides the passages to which reference has been made, and which are often the only ones quoted, other facts are mentioned which add considerably to our knowledge, and even correct it. We have already seen that Tacitus, in his account of the warlike Chatti, points out as a striking fact, *Nulli domus aut ager aut aliqua cura. Prout ad quemque venere, aluntur* (Chapter 31). Tacitus thinks it just as remarkable that they possessed neither house nor land, as that they lacked occupation and were supported by others. Ought we not therefore to assume that the German people as a general rule supported themselves by their own work? The description of the common upbringing of free and unfree speaks still more clearly. Certainly it must not be explained as meaning (Chapter 20) that the unfree always lived in the freemen's houses,[3] but even if it only means that the former were in a neighbouring building,[4] the fact that both grew up *inter eadem pecora, in eadem humo* hardly agrees with the idea of "landlords" who dislike farm-work as inferior menial labour, and think it beneath their dignity.

Even more striking, apart from the passage already quoted and always used as important evidence (vi, 22), Cæsar gives us, a few chapters farther on (Chapter 24), a noteworthy description of general significance in his comparison between Germans and Gauls. He is speaking of the mode of life of the Gallic Tectosages; they had crossed the Rhine on account of the lack of arable land and had settled in the most fertile part of Germany, by the Hercynian forest; and there they had won great fame in war. Now, however, they were living *in eadem inopia, egestate,*

[1] Wittich, *Zeitschr. für RG.*, xxii, 259, interprets this *libertas* as the people's independence from other peoples, and then as the freeman's freedom from state interference. See on this point also v. Wietersheim-Dahn, *Geschichte der Völkerwanderung*, xii, 103, on Tacitus, i, 62, and ibid., i, 115 (on Tacitus ii, 88).

[2] Wittich, op. cit., 255.

[3] Brunner, *D.R.G.*, 1, 97, note 8.

[4] Wittich, *Grundherrschaft, Anl.* 110.*

patientia, qua ante Germania permanent, eodem victu et cultu corporis utuntur. In contrast to the Gauls, therefore, the German peoples led a hard and poverty-stricken existence.[1] It was their simple and strict mode of life which was supposed to give them their superiority over the Gauls; by the sweat of their brows they wrested a scanty livelihood from the soil! Caesar would hardly have written thus if the majority of free Germans were lazy and idle, living only on their rents. Only a thoroughly virile and capable people could have conquered the world at the end of the Roman period.[2]

Finally, another of Cæsar's remarks also deserves attention, in which he gives the motives which in his opinion led to the peculiarities of German agrarian economy.[3] He says that the leaders of the people tried by this means to hinder the stronger men from seeking to extend their property and to drive the less important out of theirs. At the same time, the idea of equality would be preserved in the lower ranks, if each man saw himself placed on an equal footing with the mightiest. Does not this indicate that the aim of German agrarian and social policy was the limitation of those great estates (*Grundherrschaften*) which Wittich would represent as the general rule? Estates of this type were certainly already in existence in Germany in the time of Tacitus, but they were not numerous. The words of Tacitus himself are against the theory. He says that the description of idleness does not apply to all common freemen; only the bravest and most warlike could afford such a mode of life in time of peace (*fortissimus quisque ac bellicosissimus nihil agens*). These were obviously the leaders, who on account of their fame had more land, since it was allotted *secundum dignationem.* They were the real landlords. This interpretation is supported by a statement in the same chapter (15) that it was customary for each man to bring of his own free will presents of cattle and crops to the chiefs (or leaders) and these, though accepted as an honourable gift, would also provide the necessities of life.

The development of manorial conditions must have been furthered by the whole public and constitutional system of the Germans. The warlike and military nature of this early system has been of late more strongly emphasized by various scholars. The numerous wars, the military service which was regarded as the most important and honourable activity of freemen, took them away from farming and made it necessary for this to be done by others. War gave an opportunity of winning fame and distinction, of forming a following, and of maintaining by its help a superior position in times of peace. Tacitus especially emphasizes this side of German social development: the existence of the following, or *comitatus*, seems to him its most striking characteristic (Chapter 13). But must this not have influenced economic development also? Too little attention would appear to have been hitherto paid to it in the economic history of the early German period. It must have affected settlement too, for it was obviously to the advantage of both leader and followers to live together, or near one another. The latter received military equipment and economic support from their leader as payment for their services. If his followers were always near him, and if, as Tacitus relates (Chapter 14), they received rich presents from him, chiefly for military purposes, the continuance of this relationship might lead to their being maintained, if not in the lord's house, at any rate on his land, where they settled. Their personal

[1] See Tacitus, *Germania*, c. 28.
[2] Kossina, "Die Deutsche Vorgeschichte" (*Mannusbibl.* ix, 3rd edit. (1921) 232.
[3] vi, 22.

freedom was not yet affected by this; but the consciousness that they " belonged together " must gradually have developed a closer social connection, as a material consequence of which an economic differentiation must have crept in. This can be deduced from Tacitus' own words. In Chapter 13 he says that the " dignity " of a prince is appraised according to the strength of his *comitatus*; and the division and allotment of the land occupied by all is also carried out according to their " dignity " (Chapter 26). It cannot be accidental that Tacitus uses the same term in both passages; *dignitas*, *dignatio*, have the same meaning.

The existence of manorial conditions already in this early period is a fact which the Mark-association theory has entirely failed to take into account, and it throws the greatest doubt on the latter, since it is not compatible with its fundamental hypothesis that all the associated settlers were commoners with equal rights over communally owned land. Moreover, the new view necessarily carries with it legal inferences, which cannot be reconciled with the hitherto prevailing theory. If there was no communal ownership, but if private ownership was already in existence, differentiated as a result of manorial conditions, then the later phenomena of German law, which have been used to reconstruct the primitive period, cannot be regarded as survivals of that period. The fact that manorialism existed may, however, throw light on many questions, and may solve difficulties which stood in the way of the old theory. Seigneurial interests will explain many features of the division of the soil and distribution of acreage (*Flureinteilung*), notably the inclusion of appurtenant waste land and the resultant quarrels over the division of the Mark, the compulsory routine of cultivation (*Flurzwang*), the right of inheritance of neighbours with equal obligations, and their veto on the settlement of strangers. Just as the manor, as the possessor of rights, had a natural interest in maintaining its property undiminished, and, if possible, in increasing it and the tribute and labour dues arising from it, so also the tenants would naturally try to share burdens equally, and to prevent encroachment upon the privileges obtained thereby. They were partners, not only in their common burdens and in warding off threatened oppressions, but also in their endeavour to improve their material social position.

Thus new paths of knowledge have been opened up; above all we learn how far early conditions are in harmony with later documentary evidence, which is chiefly of manorial origin and therefore cannot be readily used for the reconstruction of completely free organizations. The formula of the freedom and equality of all Germans can no longer be maintained for the times of Cæsar and Tacitus, and the bottom is therefore knocked out of the theory, which was based upon that formula, of a communal ownership of land in a communal Mark.

Chapter III

ROMANS AND GERMANS IN THE AGE OF THE MIGRATIONS

THE views which have hitherto prevailed concerning primitive Germanic civilization, even in the first centuries of the Christian era, were chiefly based on descriptions of the age of the so-called Great Migrations (*Völkerwanderung*) which took place after the time of Cæsar and Tacitus. As a rule this was represented as a time of restless wandering, of purposeless roving from place to place by the Germans, who settled here and there, but for the most part pressed forward eager for conquest in order to plunder and to destroy all that stood in the way of their advance. They were thus not only nomads but barbarians, destroying the civilization of others, and possessing none of their own.

These, and similar views of social history, necessarily underwent no significant modification or correction, when it appeared that the so-called Migrations were by no means limited to a short period, such as the fourth century A.D., but had begun long before, and were indeed only one of a long series of movements among tribes who had been in a state of flux for a considerable time before the Christian era, having first come in closer contact with the Roman world in the well-known expeditions of the Cimbrians and Teutons about 114 B.C. Indeed the migrations did not by any means finish in A.D. 375, a year which has often been pedantically overemphasized; they lasted at least down to the end of the sixth century, which saw the Lombard conquest of Italy and the Slav colonization of the Eastern Alps and the Sudetic mountains, districts previously held by the Romans and then by the Germans. It might even be argued that they lasted until the eleventh century, when the Normans conquered England.

This long extension of the age of migration might, of course, be used to prove the continuance of what Cæsar and Tacitus reported about the "earliest" civilization, or rather lack of civilization, of the Germans. It is true that in the last decades individual scholars, after a more critical investigation of the sources, have expressed doubts about this view. It is realized that there really was not so much "migration", that these assumptions were not borne out by the statements of contemporary or almost contemporary documents, but were often merely the conclusions of scholars who were too prone to assume that a whole people had migrated, whenever Roman and Greek geographical accounts give the same names in different places. They forget that—apart from confusion or error—there may possibly have been division or breaking away, so that part of the people in question may have remained in the old settlements. Above all, it is now clear[1] that these were not purposeless migrations, born of a love of wandering or a mere lust for booty or conquest, but were due to the urgent internal need to alleviate the scarcity of the bare necessities of life. That need may have been due to the forward movement of other peoples, their neighbours to the East—Sarmatians, Huns, Slavs—or to the internal growth of the population itself, creating an excess population for whose maintenance the old settlements no longer sufficed. The latter

[1] v. Wietersheim, *Geschichte der Völkerwanderung*, 2nd edit., edited by F. Dahn, i, 11 f.

explanation has lately gained considerable support from meteorological investigations.[1] Now that variations in climate have been shown to have a certain periodicity, historians have begun to realize the fundamental connection between their economic consequences, such as drought, failure of crops and famines (which appear in the records), and the great folk-migrations of past centuries. In this way positive natural causes were found for the German need for land and for their efforts, to some extent peaceful, to gain new dwelling-places in the wide territory of the old Roman Empire.

Finally, emphasis has been rightly laid [2] on the fact that many changes in German settlement were artificially promoted by the Romans themselves, in their own interest. This was done either by calling on the Germans for help and protection and settling them in certain parts of the Empire which appeared to be threatened, or, on the contrary, by pushing them back for political or strategic reasons, and removing them, in order to divert or prevent danger, to other districts, away from thoroughfares and roads where their sudden appearance was unwelcome to Roman interests, or where they might in the future have become strong to the detriment of the Romans.

With these facts as a basis it is now possible to come to a fresh understanding of the old and important problem presented by the age of migrations. In particular, we get a new view of it if we connect it with researches into classical antiquity, of which too little notice was taken in the Germanist interpretation of the so-called Middle Ages. The patriarch of Roman history, Theodor Mommsen, thought that the most striking phenomenon of the period from Cæsar to Diocletian was the fact that instead of the Germans being Romanized, the Romans were, so to speak, Germanized.[3] "The last phase of the Roman state," he says, "is remarkable for its barbarization and expecially its Germanization; and the beginnings of this go back farther still." In my opinion the process began long before Cæsar's time. A few well-known and important facts may be mentioned here. From Cæsar's own descriptions we learn that there must have been a constant interchange between the Gauls and the Germans, the two great groups of settlers on each side of the Rhine. He tells us that the brave Belgae on the Lower Rhine were chiefly of German origin and had crossed the Rhine long before, tempted by the fertility of the soil,[4] while the Gallic Tectosagi, on the other hand, had crossed in the opposite direction, from the West, and had settled in the midst of German territory, in the fertile districts of the Hercynian mountains.[5] Finally, he gives as his reason for pushing back the Helvetii, who had left their settlements, his fear lest otherwise the Germans should advance over the Rhine into these territories, on account of the good arable land.[6] Cæsar gives the second of these examples as an illustration of the general observation that in earlier times the Gauls were braver than the Germans and, driven by their large population and lack of sufficient land, had sent colonists across the Rhine. So we find an ancient internal German colonization from the Celtic West.

For political reasons, owing to the advancing boundaries of the Roman

[1] See especially Ed. Brückner, *Klimaschwankungen seit 1700*, in A. Penck's Geographical Handbooks, vol. iv (1890).
[2] v. Wietersheim-Dahn, op. cit., 17.
[3] *Römische Geschichte*, v[4], 154.
[4] *De Bello Gallico*, ii, 4.
[5] Ibid., vi, 24.
[6] Ibid., i, 28.

Empire, it soon became more and more common for German tribes to be forcibly settled on the left bank of the Rhine. Cæsar placed some of Ariovistus' troops in the Palatinate of Alsace, and Agrippa settled the Ubii round Cologne[1]; Augustus sent some of the Sugambri to the lower Maas and the Waal, and part of the Ubii to the left bank of the Rhine[2]; Tiberius moved the Sygambri to the left bank. The Roman Empire advanced farther and farther into the areas of German settlement. Drusus had already, by peaceful means, united the Batavii of the Rhine-delta with the Empire and their neighbours on the north, the Cannenefati of North Holland; and the Frisii, farther towards the Ems, were soon highly-valued soldiers in Roman service. The Chauci, on both sides of the Weser, from the Ems to the Elbe, were also brought by Drusus under Roman rule. The Romans then carried the battle against the warlike Chatti far across the border into Germany, a war which lasted from the first to the third centuries A.D. But in the Danube lands of the East the frontiers of Rhætia were advanced from Regensburg westwards over the Danube, and Noricum especially seems to have been strongly Romanized. "Noricum became a frontier land, and, so to speak, a part of Italy."[3]

After the defeat of Varus a fundamental difference between Lower and Upper Germania is certainly noticeable, as regards Roman occupation and the advance of Roman civilization. On the Lower Rhine the scope of their political power fell back to the Rhine frontier, while on the Upper Rhine it advanced. The linking of the Lower Rhine and the North Sea with the Danube provinces, which was not brought about in the time of Augustus, was accomplished by the Flavians in the second half of the first century A.D., not indeed by the conquest of the Elbe, which was abandoned, but by the advance of their rule over the Neckar district. This programme was accomplished by the completion of the military road from Mainz via Cannstadt to the Danube, the conquest of Wetterau, and the establishment of the Odenwald line.[4]

The formerly deserted regions beyond the *Limes* were declared to be imperial domains, and were systematically colonized by settling small tenants, poor people from Gaul, on the *agri Decumati*. Here the Flavian colonization, as countless inscriptions and remains of buildings prove, brought the country to a high state of development. Under Trajan (98–117) the settlement advanced over the Neckar, and at the same time the military camp moved forward on the north of Rhætia over the Swabian Jura, the Riess, and the south of the Frankish Jura. Since Hadrian (117–138) the warlike tribes had been called upon and organized for frontier service (*numeri*), but under Marcus Aurelius (161–180) an attempt is clearly visible to break the power of resistance of the inhabitants, by means of forced levies from conquered lands. The carrying off of the Britons from Britain and their settlement as "Decumates" on the Main, in the Odenwald, and on the Neckar after the middle of the second century was the result of a system which was already customary under Trajan, and became increasingly frequent under Marcus Aurelius. Subject barbarians in tens of thousands were transferred to thinly populated parts of the Empire, in order to bring new cultivators to the land and to provide fresh recruits for the army. Especially after the war against the

[1] Mommsen, op. cit., v, 216.
[2] Pallmann, *Geschichte der Völkerwanderung*, i, 178.
[3] Mommsen, op. cit., 181.
[4] Cf. E. Fabricius, "Die Besitznahme Badens durch die Römer," *Neujahrsbl. der badischen historischen Kommission*, new edit., viii, 55 (1905).

Marcomanni, hordes of German warriors with their wives and children were thus allotted to great Roman landowners and planted on their wide properties on condition that they should be used only for agriculture and should be bound to the soil, unless they were in military service. The legal position of these *inquilini* was peculiar; they were personally free and yet bound to the soil. The Britons mentioned above were in the same position a century later.[1] In the pauses of the war against the Marcomanni, Marcus Aurelius took into Roman territory great numbers of the tribes who were leagued against him, among others, the Buriani,[2] and permitted 3,000 Naristi to exchange their settlements west of Bohemia for similar settlements in the Empire.[3]

A perfectly methodical system may be traced in the Roman policy of expansion; a preliminary colonization by laying out imperial domains and settling small farmers on them, followed by a military occupation by means of a wider disposition of troops, a continual pushing forward of the *Limes*, an increase in the network of roads, and finally an extension of provincial administration and corporate organization, which completed the internal development.[4] Thus in the second half of the second century the Roman *Limes* was advanced to the right bank of the Main, the territory of the *Limes* being actually on the left bank. At approximately equal intervals of about 15 kilometres small forts were built and garrisoned, which served to protect the imperial frontier. In the neighbourhood of these, settlements of civilians (*vici*) have been excavated, some of them of considerable size. These were for the most part camp villages (*canabae*), called into being by the material needs of the troops themselves.[5] In order to bring waste lands under cultivation, a law of Pertinax (192–3) gave permission for the occupation of great stretches of deserted and fallow ground belonging to the state (the so-called free right of *Bifang*), and the land was given to the holders in perpetuity. Moreover, they were free of taxation (*Atelie*) for ten years,[6] and then became hereditary tenants of the land which they had reclaimed, and were bound to keep under cultivation. Concrete illustrations of this development have been yielded by excavations, especially in the Rhineland, which have shown many different types of settlement, and gradations in the size of the properties held. Beside single farmsteads there were also larger settlements, and the former were by no means uniform in plan or execution. There are *villae rusticae* which seem to indicate that their owners belonged to "an upper stratum of the population, comparable at least to our yeomen-farmers"; and there are also smaller farms, showing by their simplicity that they were not inhabited by great landed proprietors or by citizens requiring a holiday resort, but by small farmers who cultivated their land with a few servants. Not a few of them may have been veterans from the neighbouring forts, who after long service there had received a small holding, in return for which they were bound to give part of their produce to the fort and to be ready with their servants for military service in time of war. The number of these must have been very great. In the Baden of to-day alone there must have been several hundred of

[1] Fabricius, op. cit., 81.
[2] Pallmann, *Geschichte der Völkerwanderung* (1863), i, 180.
[3] Mommsen, op. cit., v[4], 216.
[4] Fabricius, op. cit., 83.
[5] Cf. also E. Herzog, "Zur Okkupations- und Verwaltungsgeschichte des rechtsrheinischen Römerlandes," *Bonn. Jhb.*, cii, 83 ff. (1898).
[6] L. Mitteis, "Die Erbpacht in Altertum," *Abhandl. der Sächsischen Gesellschaft der Wissenschaften*, Phil.-hist. Cl., xx, 4 (1901); and Rostowzew, "Studien zur Geschichte des römischen Kolonates," *Archiv. für Papyrusforschung, Beiheft*, i, 391.

them.[1] The long and peaceful development of these frontier provinces under Roman rule gave rise to the requirements of a more refined culture, as may be seen in greater detail from the plan and interior equipment of these *villae*.[2]

Towards the end of the second century a definite change took place in the frontier situation.[3] As early as A.D. 162, the Chatti attacked Upper Germany and Rhætia; and in the following decades waves of Germanic tribes broke farther and farther over the Roman frontier defences. Marcus Aurelius was still able to take the offensive vigorously against them, and won victories even on their own soil. After his time, however, the Romans restricted themselves more and more to defensive action. The *Limes* was strengthened, the number of forts increased, and subject Germans who had settled on the frontier, the so-called *deditícii*, were attached to the army. Thus when the first attack of the Alemanni at the beginning of the third century (A.D. 213) made the danger more imminent, great fortifications were laid out. But by about the middle of the third century even these immense works could not withstand the fresh attack of the Germans. The Franks advanced towards the Rhine and the Alemanni into Upper Germany, breaking through these bulwarks of Roman rule. After the year A.D. 260 the right bank of the Rhine was lost to the Romans and finally won by the Germans.

The gates were thus opened wide to a great flood of German invaders; and in many different ways. Some of the Germans conquered by the Romans had again been settled on the hinterland; thus, Probus (A.D. 277) adopted this method in Britain,[4] Maximian at the end of the third century placed Franks in the territory of the Nervii and the Therii [5]; Diocletian (from 292–3 A.D.) settled Carpi and Bastarni in Thrace,[6] etc. With Diocletian the settlement of German colonists known as *laeti* was also begun in order to obtain soldiers, in return for a gift of lands in hereditary use.[7] In the third century Germans reached the highest positions,[8] not only in the army but also in the administration of the Empire, a process which grew continually, especially after the time of Constantine [9]; and contemporaries were fully conscious of this very significant admixture. In the time of Constantius, at the end of the third century, we read in a contemporary source,[10] "In all the market places of Gallic towns there sat crowds of captive barbarians. They were distributed among the provincials, in order to build again the places which perhaps they themselves had once laid waste. Nowadays the Chamavian and the Frisian ploughs for me; that wandering robber now toils for me in the filth of his calling, and brings cattle and corn to sell in my markets. He hurries to the recruiting officer and desires to become a soldier." Such colonization took place partly in the North of France, in the districts of the Somme and the Oise, partly in the region of Troyes, Langres, Dijon, and Autun.[11]

It is a mistake to represent this powerful process of Germanization as coming from above; it was not due to German conquests, or to the forcible subjection of Roman territory, nor did it occur for the first time when German states were founded on Roman soil. The mixed Romano-German states which arose in the

[1] K. Schumacher, "Zur ältesten Besiedelung Badens," *N. Heidelberger Jahrb.*, viii, 264 (1898).
[2] Dragendorff, "Westdeutschland zur Römerzeit," *Jahrb. des fr. deutsch. Hochstiftes zu Frankfurt a.M.* 199, (1910).
[3] Fabricius, op. cit., 86 ff.
[4] Pallmann, op. cit., i, 180.
[5] v. Wietersheim-Dahn, op. cit., i, 269.
[6] Ibid., i, 246, and 278 f.
[7] Ibid., i, 323 f.
[8] Pallmann, op. cit., i, 197.
[9] v. Wietersheim-Dahn, op. cit., i, 397.
[10] Der Rhetor Eumenes, *Pan.*, iv, c. 8.
[11] v. Wietersheim-Dahn, op. cit., i, 274.

fifth century in Italy, Gaul, Spain, and Africa are only the climax of the great process which had begun long before the time of Cæsar. It was built up from below on the broadest foundation. It began with the peasants of the colonate and the appearance of numerous Germans as lower house-servants; it spread to the army, as constituted by the Emperor Severus, then reached the officers and officials, and ended with the consolidation of definite "barbarian" states in the midst of the Roman population. It should be noted how this penetration of the Roman provinces is described in the accounts of Roman authors themselves. The Germans do not at first appear as conquerors, but in the subordinate position of servants. For a long time the Romans felt themselves to be entirely the masters; hence the scorn with which they regarded the *barbari*. Even in the third century a Roman writer[1] triumphantly reports that scarcely any region could be found without its captive Goth, and towards the end of the fourth century Synesius, Bishop of Cyrene, complains that there is hardly a household of means without a Goth or a Scythian as cook or house-servant, butler or steward.[2]

Thus the Germans did not come into contact with the Romans simply as enemies and opponents, (except on the frontier which they were threatening), or merely as traders to exchange their produces in the *Limes*. Not only did they enter the Roman army as soldiers, later to become veterans provided with land and settled within the district of the *Limes*; not only were they admitted into the Roman adminstration; but at the same time, or even earlier, they were able to find countless small openings in domestic and agricultural life in which they were employed in carrying out the usual routine of daily work. One of the most important internal problems of the far-flung Roman Empire in its decline was, as is well known, a great scarcity of manual labour. The employment of slaves, however numerous, was not sufficient for the increased demands of Rome's world-wide commerce. This was especially the case since the number of large landed estates (*latifundiae*) had diminished, except in Africa, and fiscal interests, as well as those of private farming, furthered the development of small holdings on the colonate system.[3] In this economic and social crisis, welcome help was given by the barbarians who had been subjected or annexed to the Roman state, and especially by the Germans. They were used not only to protect the Empire when it was threatened from without, but also to meet the demand within the state for manual labour—in the country for agriculture and in the towns for industry and commerce. Romans and Germans did not merely meet casually on their frontiers to barter their products; they lived near and with one another, in continual co-operation in a common economic activity. Thus it was possible over a long period of time for the Germans to study Roman civilization and technique at close quarters, and to acquire it for themselves. In view of this development it is not surprising that they, on their side, soon influenced Roman manners, so that even in the capital German manners and customs became "fashionable" at the beginning of the fifth century. The Emperor Honorius (397–416) was obliged to publish three edicts against the rapid increase of German fashions, forbidding the wearing in Rome of gaily coloured sleeveless coats, wide trousers, and long hair in the "barbarian" manner.[4]

[1] Trebellius Pollio, *Claud.*, c. 9; cf. Pallmann, op. cit., i, 178, note 1.
[2] *Synesii orat.*, ed. Krabinger.
[3] Cf. on this point especially the research of Rostowzew, op. cit.
[4] Pallmann, op. cit., i, 198, and Dill, *Roman Society in the last Century of the Western Empire*, 2nd edit., (1899), 297, note 4.

German influence was also clearly seen in Gallo-Roman sculpture. One of the finest students of late Roman civilization, who bases his work on his own numerous excavations, has shown with nice discrimination that in the monuments of the time the peculiarities of Rhenish culture are clearly marked, and appear most naturalistically, especially on the tombstones.[1] Apart from the official art, which is alike in all the provinces, pieces of sculpture are found which were made for private requirements, based on the ideas of the men who ordered them, and carved to suit those local demands. This is especially evident in the interior of a province, where the native population was shut in and so became the predominating influence; the artistic monuments are the expression of their natural peculiarities, their opinions, and their interests, and "under the cover of Roman technique Celtic-Germanic characteristics break through everywhere." The most typical feature is to be found in the scenes from everyday life, which occur in surprising number, and show in realistic and faithful detail the inhabitants of the Moselle region in all their occupations. These scenes are purely local and are derived from life in Gallia Belgica. Nothing like them is found in other provinces of the Roman Empire. They are strongly individual in character, peculiar especially in their love of the smallest details and their pleasure in the representation of daily life. "In comparison with the typical formal art of Rome, this Gallo-German art already shows something of those peculiarities which later distinguish the art of Germany and the Netherlands from that of Italy."

Thus we see a juxtaposition of imperial Roman and Gallo-German art, and, at the same time, a gradual transition from one to the other. These conclusions are also supported by the results of the important and numerous excavations made during the last decades in the frontier districts of the *Limes*. They testify that earlier scholars were mistaken, or at least extremely biased, in assuming that these barbarian peoples destroyed all Roman culture and completely demolished the outlying settlements here, so that something in the nature of a complete extermination took place. It is certainly true that "undermined towers and gates, walls reddened by fire, heaps of burnt ruins, scattered weapons, and the bones of the slain bear witness to the desperate resistance of the defenders"[2]; but we must guard against the generalization from these facts which was common among earlier scholars. To-day it may rather be said that as excavation proceeds farther, and historical topography gains surer evidence both of the earlier Roman and of the later Germanic periods, so the chasm which used apparently to yawn between them seems to be bridged, and over great stretches of territory the continuity of development throughout the storm and stress of the much abused "wild age of migration" is revealed.

This continuous cultural development took place, for instance, in Hessen, and in more or less the whole region of the Lower Main.[3] The Alemanni and Chatti, who conquered these territories, were "not gentle" with the inhabitants, and the well-to-do propertied classes must certainly have lost their homes and lands; but the poorer settlers, voluntarily or perforce, remained in the country. This is proved not only by the peculiar characteristics of the Roman cremation

[1] Dragendorff, *Westdeutschland zur Römerzeit*, Frankfurt, 1910.
[2] Fabricius, op. cit., 88.
[3] G. Wolff, "Die Bevölkerung des rechtsrheinischen Germaniens nach dem Untergang der Römerherrschaft," *Quartalbl. d. Histor. Ver. für das Grossherzogtum Hessen*, new edit., i, 602 ff.

graves, for example, near the fort in Gross-Krotzenburg (above Hanau),[1] but also by discoveries of coins and tools, and above all by the lay-out of the modern village streets, house-sites, ploughed lands, and field-paths, which was obviously determined by that of the streets of the Roman camp-village, and is identical with them. Moreover, the same land which was once covered by the Roman camp-village is still government property. It can be proved that the modern domain was given by the king in Carolingian times from the crown possessions to the church, and that it came back to the government again at the dissolution of the monasteries. When the Main territory was conquered by the Franks under Clovis (*c.* A.D. 500) these old Roman posts were claimed as crown land. The Frankish kings were the legal successors of the chiefs of the Alemanni. It seems probable that at the time of the conquest the latter had appropriated the Roman state property to themselves. This happy combination of facts enabled Georg Wolff to give a greater historical value to the results of his excavations, with important consequences. He himself, for instance, gained new help for his succeeding researches, and his discoveries caused other workers to proceed with similar investigation of various other Roman sites, and so to complete the proof of his theories.[2]

It is important to notice the general conclusions which have been drawn by K. Schumacher from the results of a number of separate excavations on the right bank of the Rhine, from Basel to Mainz. It appears that the earlier theories, which represented the whole plain of the Rhine as a swamp, were wrong, and that even in prehistoric times it was widely cultivated and settled. A considerable breaking up and clearance of the surrounding land for the purpose of tillage had already taken place, so that successive tribes again and again made use of their predecessors' work. In general Schumacher comes to the following important conclusion: "Even during the so-called Age of Migration there was no essential change in the choice of places for settlement, a fact which is proved beyond a doubt by recent excavations, especially by the discovery of a great number of long barrows. It is true that the discoveries show the Alemanni and Franks to have penetrated, here and there, farther into the mountains, and also to have settled more thickly in the lowlands of the Rhine, but in the plain of the Rhine itself they everywhere appropriated the fields which had been cultivated by the Romans and their predecessors, and erected their simple log and wattle huts close to them, even though they hated the urban mode of settlement of the Romans. Though doubt may be thrown on Ammianus' remark that the farmhouses of the Alemanni in the lower Rhine valley were built in the Roman fashion (17, 1), yet it is clear, both from literary accounts and from excavations, that on the right plain of the Rhine, where, owing to the protection of the Roman fortresses on the left bank, Roman authority was able to make a stand for a while even when the *Limes* was lost, Alemannic civilization was in closer contact than elsewhere with that of Rome, and thus continuity of population was secured. And almost all the above-mentioned sites of pre-Roman, Roman, and Alemannic-Frankish times (of which a detailed list is given by Schumacher) are also mentioned in early medieval sources as places of

[1] Cf. especially Wolff's later description of this fortified village: "Über Zusammenhänge römischer und frühmittelalterlicher Kultur im Mainlande," *Einzelforschungen über Kunst- und Altertumsgegenstände zu Frankfurt a.M.* (1908).

[2] See German edit., i[2], 107 f.

human occupation, and on most of them villages and towns exist to this day." [1]

For Baden, Albert Krieger's excellent *Topographical Dictionary* (1898) is a reliable basis for research, as the historical, and especially the documentary, references for each place are given. In the same way, in all the other German districts concerned, the examination of individual sites has demonstrated that the theories of G. Wolff and K. Schumacher are correct and have a general application. Indeed, it is now possible to uphold with more assurance much which was then only conjecture. For example, as regards the land round the Neckar, E. Fabricius has proved that the district of Sumelocenna (Rottenburg) was an imperial domain (*saltus*) of considerable extent at least until the middle of the second century A.D.[2] In the end it was a *civitas*, an independent community of citizens.[3] Thus, even without picturing the seizure of Roman soil by the Germans as the savage robbery which it was formerly (and by some scholars quite recently) considered to be, we see that it was possible during the Alemannic conquest for the imperial domains to be appropriated by the dukes or leaders of the German tribes, without detriment to the rights of private persons. A further piece of evidence may be added, which so far has been lacking in Wolff's theories. The documentary evidence for these districts really begins with the Carolingian period; and about the middle of the eighth century, under Pippin and Carloman, extensive confiscations took place in the Duchy of Alemannia, by which ancient ducal property was transferred to the Carolingians.[4] Thus the estates of the Carolingian kings were really derived from earlier ducal domains.

Again, a similar continuity of cultural development has been proved for the great Roman colony Augusta Raurica (Kaiseraugst, near Basle).[5] Here, too, the existing system of roads corresponds in plan and direction with the earlier Roman roads; remains belonging to the Merovingian period have been excavated on the site of the Roman colony; and it can be proved that this also was crown land later in the Middle Ages. Many other places testify to the same facts.[6]

It is not, however, only in the tribal territory of the Alemanni that the theory of continuity of cultural development holds good; this region provides a particularly good illustration, because here excavation has made considerable progress. We can now assume a similar development in North-West Germany, although, as has been pointed out, this district was not held permanently by the Romans. A few scholars long ago expressed the opinion that such a continuity was possible. Rhamm, for example, urged it in 1905 with reference to the German North Sea coast, from which England was conquered by the Anglo-Saxons, the *terra antiquorum Saxonum* [7] as it was called in early documents. Indeed he was inclined to assume from this that "in Germany in general", a number of ancient villages, which appear for the first time in eighth-century

[1] "Zur Besiedlungsgeschichte des rechtrheinischen Rheintales zwischen Basel und Mainz," 42, *Mainz 50 jährigen Festschrift* (1902). [2] Op. cit., 56 f.

[3] Haug-Sixt, *Die römischen Inschriften und Bildwerke Württembergs* (1914), 199 f.

[4] See the proofs of this in my book *Die Wirtschaftsentwicklung der Karolingerzeit*, i, 110 (1912), note 2.

[5] Th. Burckhardt-Biedermann, *Die Kolonie Augusta Raurica* (1910), 28 ff.; and the same author in the *Basler Zeitschr.*, ix (1909).

[6] See German edit., i², 111 ff.

[7] *Die Grosshufen der Nordgermanen*, 23.

documents, were already in existence at the end of the fourth century when the migrations were just coming to an end; and that from then until the Carolingian period no significant increase in the development of the land had taken place. At the same time Johannes Hoops expressed the opinion, with reference to Jutland, Denmark, and the territory between the Weser and the Elbe, "that the great majority of the places mentioned in documents of the seventh and eighth centuries, when literary evidence begins, go back to prehistoric times."[1] Recent excavations have proved that Westphalia, especially round Münster and Bockum, is rich in megalithic graves, which are found chiefly in Emstal in West Hanover and also along the Lippe.

In this connection the investigations which Langewiesche conducted into German settlements in North-West Germany between the Rhine and the Weser, are especially worthy of attention.[2] He tried to explain the πόλεις of Germany, mentioned by the geographer Ptolemy, and based his identifications not only on linguistic evidence but also, more especially, on excavations and finds of the prehistoric and early historic periods in those places. The discovery of Roman bars of lead in Soest caused Schulten to investigate more closely the question of the Roman camps on the Lippe.[3] He is convinced that these may be identified with the help of Ptolemy's account; in his view Aliso is on the Upper Lippe, the Melibocus mountains are not the Harz but the Teutoburg forest, Fort Pheugaron lies north of Soest, Sterontion is Oberaden, and Bogadion is identical with Haltern. He also investigated the Weser fort Tulisurgium, near Höxter (on the Weser), Tacelia near Bremerhaven or Bremen, Tulifurdum (Verden), and Ascalingium (near Minden). He is strongly opposed to those writers who entirely reject Ptolemy's account.[4] Even though scholars may differ as to the identity of individual place-names, it may certainly be granted that these districts between the Rhine and the Weser were the scene of numerous settlements and a vigorous trade in the second century A.D.[5] K. Schumacher sees in these πόλεις of Ptolemy German Gau townships of the late La Tène period, in and near which were situated the residences of tribal chiefs, the law-courts, and the places of worship.[6] Thus in the territory between the Rhine and the Weser, which was so soon relinquished by the Romans, we can also trace a continuous settlement from the prehistoric and Roman periods to the time of Ptolemy's πόλεις (second century A.D.) and down to the well-known early Saxon and Frankish burgs. Above all, it is proved that even in the second century A.D. there were in this district important roads of communication, running from the Rhine and the Main, and often along the edge of the range of wooded hills.

In this connection a further example characteristic of North-West Germany may be cited, and probably those who know this territory well will be able to add others. During the excavations of the Roman fort Asciburgium, near Duisburg, it was observed that the district of Friemersheim (near Mörs) was a centre of Roman culture.[7] Even in early Frankish times the monastery of

[1] *Waldbäume und Kulturpflanzen*, 529.
[2] *Progr. d. Realprogymn. zu Bünde i. W.*, 1909–1910.
[3] "Eine neue Römerspur in Westfalen," *Bonn. Jhb.*, cxxiv, (1917), 88 ff.
[4] Op. cit., 91, note 4.
[5] This is admitted even by L. Schmidt, who is very sceptical about the supposed positions of Ptolemaic places. *Histor. Vierteljahrschr.*, v, 79 ff. (1902), and *Deutsche Erde*, ix, 119 (1910).
[6] *Germania*, iii, 78 (1919). Cf. Germ. edit., i², 115 f.
[7] Cf. "Boschheidgen, Asciburgium," *Bonner Jahrbücher*, civ, 157 (1899). Also E. Norden, op. cit., 189 ff., 488 ff.

Werden had a large estate there, derived chiefly from royal gifts; it is also described as contributing to the fiscus.[1] Note that towards the end of the eighth century the monastery lay quite near the Frankish-Saxon boundary in the valley of the Ruhr, in the seclusion necessary for its purpose. Then Charles the Great, finding it important to promote the power of the church in West Saxony, presented it with the royal estate of Friemersheim near the junction of the Ruhr and the Rhine, and thus a connection with the Frankish hinterland was effected.[2] Here too, therefore, early Germanic cultural development is linked with that of Rome and is by no means a completely new phenomenon. Thus in North-West Germany, likewise, research, so far as it has gone, shows in general a continuity of settlement similar to that found in the Main region of Hessen and in the Neckar district.

Archæological research, and especially excavation, apart from the direct and immediate information obtained from them, advance our knowledge in a more general and less direct manner, helping us to give proper consideration to other factors, especially to place-names, which serve as guides in studying the history of settlement. Place-names have long been used to throw light on those early periods, of which so far no records have been discovered.[3] Names ending in *-weil* and *-weiler* correspond to the Romn *vill* and *villare*. They used to be ascribed to the Alemanni and were considered a distinguishing characteristic of their settlements, found in no other German tribe.[4] This opinion prevailed for some time, and was used by a number of scholars as their chief means of determining the extent and expansion of the Alemannic settlements. Gradually, however, a more correct interpretation of this group of local names was made possible by a closer examination of other settlement districts.[5] In 1891 archæological research demonstrated that most places with names ending in *-weiler* had been non-military Roman settlements, showing that there was a certain continuity between the Roman and early medieval settlements.[6] Witte's demonstration that in the district of place-names ending in *-weiler* Romance field-names survived until the late Middle Ages, even in regions which remained completely German, put the connection with Roman settlements beyond a doubt.[7] He showed further that these places owe their origin to a Romano-Celtic population.

Karl Weller in his researches into the history of settlements in Württemberg,[8] the centre of Alemannic colonization, emphasized the fact that the ending *-weiler* goes back to the days of Roman civilization, pointing out that this borrowed word confirms the connection between Roman and German colonization, especially as Roman settlements can be proved to have existed in many places which have that ending. The frequency of these place-names in Alemannic territory may be explained by the fact that the Alemanni were the first to take possession of

[1] Cf. R. Kötzschke, *Rheinische Urbare*, ii, 15 f.
[2] Ibid., preface, p. xiii ff.
[3] See W. Arnold, *Ansiedlungen und Wanderungen deutscher Stämme* (1875), 163.
[4] Op. cit., 164.
[5] Cf. German edit., i[2], 117 f.
[6] L. G. Wolff, *Korr.-Bl. d. Westd. Zeitschr.*, x, Sp. 132. Cf. also his remarks in 1895, *Quartalbl. d. Histor. Ver. für das Grossherzogtum Hessen*, new edit., i, 607.
[7] "Das deutsche Sprachgebiet Lothringens" (in A. Kirchhoffs *Forschungen zur Deutschen Landes- und Volkskunde*, viii, 6), 520 f. (1894).
[8] "Die Ansiedelungsgeschichte des württembergischen Frankens rechts vom Neckar. *Württ. Vierteljahrschr. f. Landesgeschichte*, iii, 31 f. (1894).

much of the earlier Roman territory. But the word might just as well have been taken over by any other German tribe. Weller thinks that the Alemanni kept the names at first for the remnants of Roman farmsteads, probably when they used the Roman settlement for their own dwellings or built their houses on its ruins; then the word was transferred to those Alemannic settlements in which the houses were more carefully built according to the Roman style (i.e. with a stone foundation), or in which the buildings were better arranged after the Roman model, with the farm-buildings separate from the dwelling-house. The Alemanni aimed above all at occupying not waste forest-land, but the well-cultivated fields of the Romans.[1] The Roman frontier wall represented an important halting-place in the history of colonization, in that the territory on its farther side, even where the arable land was excellent, as, for example, the Hohenloher plain, was in general not densely settled until later, in the age of the great manorial estates.

Weller now put forward the view that place-names ending in *-weiler* began just after the Frankish immigration, that with the spread of manorial conditions they gradually came from the west over the Rhine,[2] and were therefore a sign of increasing cultivation of the land, especially in the case of the hilly districts which were settled only by degrees. He also attacks Witte's theory that places ending in *-weiler* in German-speaking districts owe their origin to a Romano-Celtic population.[3] However, he has produced no evidence against it. The fact that place-names in *-weiler* are found for the first time in Frankish records of the eighth century, does not in any way justify the drastic conclusions which Weller bases on it. Do we possess, for the preceding period of the third to the eighth century, any comparable body of records, from the silence of which we could really confirm the theory that these place-names terminating in *-weiler* did not exist? As elsewhere, such places may have been in existence for a long time before there was an opportunity for landowners to mention them in the extant charters of the late Frankish period, when they were presented to newly founded churches or monasteries, or when laymen obtained lands there. It is essential to-day to be very cautious in the use of the *testimonium ex silentio*. The records which we possess are only a fragment of what formerly existed; for example, those of the richly endowed Swabian abbey of Reichenau are completely lost and the charters of Lorsch have largely perished, especially those dealing with conditions in the early Frankish period.[4] A continuous series of records does not properly begin until the time of Charles the Great; but it is a fundamental mistake to assume that anything which comes to our notice for the first time in a collection of sources formed in this haphazard way was not in existence before.

Moreover, the fact that a *-weiler* place-name was called after an actual person appearing in eighth-century sources, does not prove that the town or village had just been established at that time.[5] In Württemberg it has been proved that places which show traces of Roman cultivation are also those where prehistoric long barrows (*Reihengräber*) have been excavated.[6] O. Behaghel has recently

[1] Ibid., vii, 304 (1898).
[2] Ibid., 330, note 6.
[3] Ibid., 329, note 5.
[4] Cf. my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, ii, 4 (1913).
[5] Cf. German edit., i[3], 121.
[6] See German edit., i[3], 122, note 106.

shown the continuity of *-weiler* places in general from Roman times[1]; by a comprehensive and detailed research into all German districts where there are place-names ending in *-weiler*, or having *weil* as any part of them, he has been able to prove that the great majority of them had been in Roman occupation, and that in not a few of the rest such occupation could be assumed from their position and from the course of Roman roads, as we now know it. Such names most commonly occur in the neighbourhood of Roman forts and of *Limes*, but they are also found beyond the latter, and to some extent under its protection. They are specially numerous in Lorraine and Alsace, Baden, Switzerland, and Württemberg, and also occur as far away as Hessen and Bavaria. The farther we go north and east, away from the main centres of Roman power, the fewer we find.[2]

Thus places ending in *-weiler* are connected with Roman settlements, whether Roman provincials or Romano-Celtic people once owned land and lived in *villae* there, or whether retired soldiers (among them many Germans who had entered Roman service) had received holdings in the frontier territory, or, finally, whether new German settlements arose on soil cultivated in the Roman period and the suffix *-weiler*, meaning "place of settlement", was simply added to the names of these Germans.

A very interesting fact has been pointed out by Miedel for the district of Freiburg i. Br.[3] Place-names with *Walch-* as the first component are closely connected with those ending in *-weiler*; he was able to quote about sixty of these. Some of these are themselves old places in *-weiler*; others lie in the neighbourhood of these. This makes the connection with Roman settlement and population still clearer. Behaghel formulated the results of his researches thus: "The old places in *-weiler* illustrate the sway of three peoples dwelling there after one another and with one another: the original founders, the Romans; the later rulers, the Germans; and the smaller Romano-Celtic people living round them." Swiss evidence, too, provided him with the important point that place-names which indicate clearings, or water and marsh, are never found in connection with places ending in *-weiler*. It could obviously be no pleasure to the Roman veteran to settle in marshes or to clear primeval forest.[4]

The results of Behaghel's researches have been confirmed and supplemented from other parts of Germany.[5] Recently K. Schumacher has dealt in general with the *-weiler* names in West Germany.[6] They are found there "in great numbers off the Roman roads on small rivers and brooks, where very many Roman *villae rusticae* have also been discovered either close by, or not far away. They are therefore agricultural settlements, the inhabitants of which continued to look after the fields or the Roman farmhouses, and which were situated either in the same place or near the ruins of Roman settlements. Excavations lead to the conclusion that the Gallo-Roman population remained there. Some of these places are Roman settlements, others are new German settlements near a *villare*, attracted by the favourable situation and the agriculture of the Romans." Research, which had at first dealt mainly with the mountainous south-west of

[1] "Die deutschen Weilerorte", *Wörter und Sachen*, ii, 42 ff. (1910).
[2] Behaghel, op. cit., 78.
[3] *Zeitschr. der Gesellschaft für Beförderung der Geschichts- Altertums- und Volkskunde zu Freiburg*, i, vol. xxii, 303.
[4] Behaghel, op. cit., 62.
[5] See German edit., i², 123 f.
[6] *Prähistor. Zeitschr.*, viii, 133 ff. (1916), especially 160.

Germany, the old imperial land, thus gains depth and certainty by being extended to a more northerly and flatter district. In general these place-names ending in *-weiler* are an important aid to the understanding of the relation between the Roman and the early German settlements. It has also been noticed that in Württemberg later crown lands are found on the site of ancient Roman settlements, as for example in Heilbronn and Lauffen.

When we go farther east, Rhætia, and especially the Tyrol, are peculiarly interesting. Earlier scholars considered that there, too, the incursions of the German barbarians had played a very important part, and assumed that the earlier civilization had been for the most part destroyed by them. But the farther research advances, the more obvious it becomes that Rhætia was strongly Romanized. In the most remote Alpine valleys, and up to comparatively high mountain pastures, traces of Roman settlements are to be found even to-day, and it is the same in Eastern Switzerland. Not only is Romanization noticeable in the innermost valleys of Graubünden, but obvious remains of it are found also in ancient Switzerland, i.e. the Waldstätte.[1] Historians and philologists have recently investigated the interesting question of why Romanization should have endured so tenaciously in these Alpine districts, while traces of it do not appear nearly so frequently in the neighbouring Noricum, which was once just as thoroughly Romanized. It has been shown, however, that Rhætia became very important under the Empire, and that Rome valued its continued possession because it guaranteed the safety of Italy itself.[2] But of the numerous destructive campaigns which the Germans are supposed to have made through Tyrolese Rhætia to Italy, " hardly one can be proved for certain, so that the northern plain was laid waste much less frequently and completely by barbarian inroads than is usually supposed," and " therefore in the mountainous part of the province the population was not seriously diminished, and depopulation in the flat country did not take place so early or to the extent hitherto supposed ". Finally it was admitted " that the settlement of the immigrating barbarians in the fifth and sixth centuries was not for the most part accomplished by violence, and in the mountainous south as a rule there was none. Quietly and with little bloodshed the barbarians took possession of the unowned or hitherto unsettled districts, and all that they demanded in addition from the Roman provincials among whom they settled was the lordship over the whole land; and the Roman provincials, accustomed for so long to foreign rule, were neither able nor anxious to refuse them ".[3]

These are an historian's conclusions, but they have recently been supplemented by the research of a well-known philologist, Karl v. Ettmayer.[4] He concludes that the barbarian threat to the Roman provinces may actually have caused an increase in the Romanization of this mountain territory by causing numerous Roman provincials to flee from the less protected Alpine foreland into the mountains.[5] It can be assumed that in early times German and Roman settlements in this region were intermingled.[6] Where the first Baiuvarian attacks fell, as in the Inn valley, Roman peoples for a long time held their ground right

[1] Cf. Oechsli, *Die Anfänge der Schweizer Eidgenossenschaft* (1891), 15.
[2] T. Egger, *Archiv. für Österr. Gesch.*, 90 (1901).
[3] Op. cit., 97.
[4] "Die geschichtlichen Grundlagen der Sprachenverteilung in Tirol", *Mitteil. d. Instit., Ergänzungsband* ix, 1 ff. (1915).
[5] Ibid., 16 f. [6] Ibid., 19.

and left in the remote recesses of the mountains.[1] But even in districts where there was a considerable German immigration, as for example round Bruneck in the Puster valley, small Roman enclaves remained on all sides.[2] Moreover this German immigration was quite peaceful. Even in the Upper Pinzgau scattered Romance farm-names are found, often in the best positions. Another important piece of evidence is the fact that in South Tyrol, Germans, perhaps of East German origin, had settled even before the Baiuvari and Lombards.[3] Odoacer must have sent a considerable number of his East German mercenaries into these frontier provinces to protect them.[4] The German-speaking areas in the Etsch valley in Southern Tyrol, which are not found in South-West Tyrol, the Oglio valley, and Veltlin, can only be explained by the presence of German colonists, who were brought there by German conquerors. There were no enclosed settlements, but German and Romance peoples probably lived side by side.[5] Thus besides the purely German districts there must have been a zone of mixed languages or peoples, as the case may be, which began with the migrations.[6] "The so-called *Sprachinseln* or language pockets of South Tyrol are simply the last remains of this zone of mixed language, which once included the most important districts of Tyrol." The farther the German enclaves lay from the Bavarian tribal territory, the less able were the German colonists to hold their ground against the surrounding Romance inhabitants; but their origins go back to the age of migration.

In this connection it should be mentioned that in the Tyrol also a continuity of settlement can be proved. This is no place for a discussion of either the much-debated problem of the identity of the "Ræti", against whom the Romans had to fight for the possession of the land, or the equally controversial question as to whether certain place-names are of Etruscan or Illyrian origin, and therefore point to a settlement before the Romans came. These points are considered in detail in the excellent work of Friedrich Stolz.[7] It will suffice here to refer to the prehistoric excavations along the Roman roads in the Tyrol. These lie not only on the great highways, which were used naturally from the earliest time, such as the Brenner road, or the lines of the Inn, or the Drav, but also along smaller side-roads, such as the route running from Hall in the Inn Valley past Lans and Sistrans (in the Mittelgebirge) to Matrei on the Brenner, or in the Etsch valley between Meran and Bozen, or in the Vintsch district near Glurns, etc.[8] It is notable that, in the mountain pastures above the valley, graves are often found with remains dating from the age of the migrations, in the very places which were already settled in the prehistoric period.[9]

Our researches have now brought us to Bavaria. This important Alpine foreland, which the Romans ruled as far as the Danube, was intensively settled in the late Roman period, as is shown by the evidence of roads, inscriptions, coins,

[1] Ibid., 18. Also G. Buchner, "Die Ortsnamen des Karwendelgebietes.", *Oberbayer. Archiv.* lxi (1918), 259 ff., and H. Wopfner, "Die Besiedelung der Hochgebirgstäler," *Zeitschr. d. Deutsch. u. Österr. Alpenver.*, xv, 25 ff.

[2] Ettmayer, op. cit., 21.

[3] Ibid., 29.

[4] Egger, op. cit., 214.

[5] v. Ettmayer, op. cit., 31.

[6] Ibid., 32.

[7] *Die Urbevölkerung Tirols*, 2nd edit., 1892.

[8] See German edit., i², 128, notes 132–5.

[9] Cf. for example the excavations at St. Apollonia of Grissian (near Meran) discussed by P. Buberl in "Ein Armring aus der Völkerwanderungszeit," *Jahrbuch der Zentralkommission*, (1905), 2.

etc., brought to light by recent excavations.[1] We have seen that there was already a strong admixture of German population in the Danube country when the Romans began their conquering expedition from the direction of the Bodensee and the Inn, and that during Roman rule many thousands of barbarians were settled as half-free people in the frontier provinces, and were used as soldiers, especially under the Emperor Probus (276–282).[2] Moreover, we know that even in the Emperor Trajan's time there was a peaceful intercourse here with various German tribes; the Hermunduri were allowed to trade freely on Roman territory, especially in the markets of Augsburg, the capital of Rhætia II.[3] Here also prehistory and early German archæology have provided a firm foundation on which new conclusions may be based. Early German long barrows were found along the old Roman roads; they are lacking precisely where there are also no fields lying high up on the mountain side (*Hochäcker*), or traces of Roman occupation.[4] The immigrants at first kept to the districts cultivated in pre-Roman and Roman times, and to the agriculture already in existence. Moreover, *weiler* is found as a field-name on estates where Roman settlements can be proved.[5] Here, too, Romans apparently remained and maintained themselves well on into the Germanic period.[6]

But other arguments for the continuity of cultural development in Bavaria may also be brought forward. The earliest Christianization is clearly connected with the Roman roads, which provided a channel for the progress and expansion of the church missions.[7] This has been confirmed by later excavations, which have shown a direct archæological connection in various places, and that not only in the larger towns; we shall deal with these later. Christian churches appear to have been built directly above Roman temples.[8] Fastlinger has drawn attention to the fact that the patron saints of the oldest churches and chapels in Bavaria yield important material for the advancement of historical knowledge. He shows that Saint Laurence was renowned as the patron saint of churches which were originally Roman.[9] We find him not only in the more important places, which are known to have been Roman, but also in smaller ones, situated on Roman roads, or yielding Roman remains. These Roman churches of St. Laurence belong to the fourth and fifth centuries. Fastlinger acutely concludes that wherever churches of St. Laurence appear in the oldest records (eighth and ninth centuries) they must be presumed to be revivals of earlier Roman foundations. The same is true of churches of St. George, St. Michael, and St. Margaret mentioned in the early records.

Finally, it can also be proved in Bavaria that in numerous places which were originally Roman settlements, domain-land is found in the Agilolfing and

[1] German edit., i², 129, note 137.
[2] German edit., i³, 129.
[3] Tacitus, *Germania*, c. 41. See also German edit., i², 129.
[4] F. Weber, *Beitr. zur anthropol. und Urgeschich. Bayerns*, vols. xiv and xv, 155; H. Arnold, ibid., 75.
[5] F. Ohlenschlager, *Sage und Forschung*, München, 1885, 13.
[6] Cf. Chr. Frank, "Die römische Strasse von Kempten nach Epfach," *Beitr. zur Anthropologie und Urgeschichte Bayerns*, xvii, 27 (1909), and H. Arnold, "Das römische Heer im bayerischen Rätien," ibid., xiv, 97 ff.
[7] *Geschichte der Einführung des Christentums in Südostdeutschland*, iii, 1 ff. (1874); cf. also H. Arnold, *Beitr. zur Anthropologie und Urgeschichte*, xiv, 75.
[8] See German edit., i², 131.
[9] "Die Kirchenpatrozinen in ihrer Bedeutung für Altbayerns ältestes Kirchenwesen," *Oberbayerisches Archiv.*, l, 339 ff. (1897). See also by the same author, "Das Flurpatronat der Drachenheiligen in Altbayern," *Beitr. zur Anthropologie und Urgeschichte*, xiv, 178 ff.

early Frankish period. Here the famous salt-springs of Reichenhall merit special consideration; they were already working in pre-Roman times, in the Roman period they were imperial domains, then ownerless, and finally ducal domains.[1] Investigation of the Carolingian royal palaces in old Bavaria has shown that, in most cases, ducal residences of the Agilolfing family had already existed there in pre-Carolingian times.[2] We can, however, trace a connection even farther back; it is notable that on all these palace sites there had been Roman settlements. This is well known in the case of the towns of Regensburg, Ingolstadt, and Ulm; but even in places which are of no importance to-day, such as Ranshofen and Ostermieting, Osterhofen (Alt-)Otting, Aibling and Mattighofen, Roman remains have been excavated. An earlier pre-Carolingian settlement can now be proved for the palace of Forchheim in Oberfranken, since, in a circular wall near Kirchehrenbach (in the Forchheim district), a bronze girdle-ornament of the fifth or sixth century has been found, made on a Roman pattern in a German workshop.[3] Another example is provided by Staffelsee in Upper Bavaria; the famous *Exempla brevium ad describendas res ecclesiasticas et fiscales* of the early Carolingian period contains a survey of fiscal property there,[4] and in the Roman period the road from Partenkirchen (Partanum) to Augsburg ran past it[5]; numerous coins have been discovered. It is probable that something similar is also true of Neuburg on the Danube, where Roman defensive works have been found. It is mentioned at the beginning of the fifth century (i.e. after the so-called migration era) in the Tabula Peutingeriana; and, on the other hand, royal property, originating from ducal possessions, existed there in 938.[6]

Thus it is probable that in these lands taken from the Romans in Bavaria, as on the Main and in Württemberg, the domains were first taken over by the Germanic war chiefs and were then transferred to the dukes or kings.

The next district to be considered is Noricum. It was especially strongly Romanized under the Roman Empire — an outpost of Italy, to quote Th. Mommsen,[7] and the Germans were in constant touch with the Romans there from the second century. In the second half of that century the Romans crossed the Danube into the territory of the Marcomanni and Quadi, and built forts. Ambassadors from the German peoples complained to the Emperor that the Roman garrison hindered them in their stock-raising, tillage, and other peaceful occupations.[8] In spite of the long war, the Marcomanni promised, on the conclusion of peace, to deliver a fixed amount of corn annually to the Romans,[9] and the Quadi similarly paid in cattle and horses.[10]

The Romans remained until the second half of the fifth century. A biography of St. Severinus describes the collapse of Roman rule on the Danube and the advancing flood of Germanic peoples, and the account there given has been used by scholars not only for information as to the retreat of the Romans

[1] Cf. v. Chlingensperg, *Das Gräberfeld von Reichenhall in Oberbayern* (1890), 101.

[2] Fastlinger, "Karolingische Pfalzen in Altbayern." *Forschungen zur Geschichte Bayerns*, xii, 234 (1904), esp. 266.

[3] For special literature on places mentioned see German edit., i[2], 132, n. 153–8.

[4] *MG. LL.* 4°. Capit. 1, 250. Also my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, 1, 64 ff (1912).

[5] Cf. Riezler, *Geschichte Bayerns*, 1, 38, note 3, and F. Weber, op. cit., xiv, 9, note 10.

[6] Cf. Gg. Schrötter, "Beitr. zur älteren Geschichte von Neuberg a.D.," *Altbayerische Monatsschr.*, xii, 128 ff. (1913–14).

[7] Cf. above, 50.

[8] *Cassius Dio*, lxxi, 20.

[9] Ibid., lxxii, 2.

[10] Ibid., lxxi, 11.

from Noricum, but also as a proof of the theory of destruction. Here the destruction of an old civilization by the barbarians seemed to be clearly visible; and the latest investigation into place-names quotes the statement that *all* Romans were sent to Italy in 488 by order of Odoacer, as a proof that no remnant of them can have been left in the country.[1] But it is impossible not to feel grave doubts about the evidence of the *Vita* on this question. Its reliability is suspect for three reasons. First, it is not a contemporary account, but was written more than a generation after the events which it describes, at the beginning of the sixth century, when the loss of this Roman province was complete and was still an impressive and painful event in the eyes of contemporaries. Secondly, the identity of the author makes the reliability of the account still more doubtful. He was a certain Eugippius, a pupil of Severinus, who wrote it in his old age, not from personal knowledge but from the accounts of other older men, i.e. from hearsay, and he lived in the south of Italy, near Naples, far from the boundaries of the Empire. Thirdly, and most important of all, the author is biased in more than one respect, for he is a man of true Roman feeling and thought,[2] seeing the Germans only as "barbarians"; he is, moreover, a priest and thus necessarily hostile to these Aryan heretics! He could have had no other view of them and may have written in all good faith. He had obtained his information from the defeated side, which had had to give up ancient possessions; and the mood reflected in the *Vita* is that of a retreat.[3] The positive aspects of German activity in those lost and distant lands had no interest for Eugippius; how should he have concerned himself with them? Therefore "ruin and destruction" were bound to be the recurring motif in the life of a man who had himself attempted the hopeless task of defending Roman Catholic institutions.

Obviously the *Vita Severini* is not a source on which far-reaching conclusions as to barbarian destructiveness can be based. When Eugippius says that all inhabitants of Noricum (*omnes incolae*) were sent away from the province, after having all (*universi*) been collected together,[4] his description is not necessarily accurate, in spite of his gift for observation and his love of truth.[5] Are we, then, justified in arguing from it that all "Walchen" and Roman provincials found in late eighth-century records were later immigrants, and that the Roman people of the *Indiculus Arnonis* of Salzburg were not so much Norici who had remained behind as Rhæti who had immigrated?[6] To begin with, a satisfactory explanation is required as to why the Rhæti in the sixth or seventh century should have migrated to Noricum rather than elsewhere. For if the reason was the advance of the Germans, why did the Rhæti not retreat to their kinsmen in Italy, as the Romance people of Noricum did? Is it really at all probable that they showed a greater power of resistance than the Norici, and succeeded in spreading north and east, in spite of the fact that the Germans were steadily advancing from those directions? At the end of the sixth century the Baiuvari had already pressed forward over the Brenner to Bozen and into the Puster valley, where they met the Southern Slavs who had come thus far from the south-east. At the same time, or even earlier, the Lombards were also coming from the

[1] See German edit., i², 134 f.
[2] Cf. on this point M. Büdinger, "Eugippius," *Sitz.-Ber. der Wiener Akademie*, xci, 796 f.
[3] Eugippius was himself in the retreat of 488. (See *Vita Sever.* Ch. 44.)
[4] *Vita Sever.* Ch. xliv.
[5] J. Strnadt is of this opinion.
[6] See German edit., i², 136.

east in a south-westerly direction, from Pannonia and the Rugiland, i.e. even from Noricum.

Even if we admit that the designation "Walch", "Wälsch" did not apply to Roman peoples alone, but also to any foreign immigrants,[1] so that its meaning is not too restricted and so that Walch may perhaps represent an old Bavarian proper name, Ualho, and the place designation Walchen mean "belonging to the clan of a Walaho",[2] we need not entirely give up the assumption that in the place-names in Walch we have a trace of old Roman settlement. It is certainly necessary to discriminate carefully and, as in all investigations of place-names, to pay special attention to the date of the records, and to the earliest word-formation. Careful scholarship, however, must not empty out the baby with the bath-water. Not all the numerous places ending in Walch are of later date, nor can they all be named after a Ualho. The fact remains that the Salzburg surveys of the end of the eighth century mention a *vicus Romaniscus* in the Salzburggau on the Saal, which is identical with the "Wals" west of Salzburg at the present day.[3] Furthermore, it is noteworthy that the same ancient source mentions many transfers of servile Romani on the Traun,[4] in the Attergau,[5] and on the Vöckla,[6] and if we identify these places according to the corresponding passages in the *Breves Notitiae*, or in later Urbar (manorial surveys), we find Walch places, Traunwalchen or Strasswalchen.[7] In the neighbourhood of Wals and Uualardorf[8] there are a number of places which are already mentioned in the *Indiculus Arnonis* and are obviously Latin word-forms. In places with Latin names, the same source indicates further transfers from tributary Roman peoples.[9]

Finally, other reliable evidence may be adduced to show that these Walch places are very old settlements of the pre-Frankish period. In those very districts there occur not only place-names ending in *-weil*,[10] but many ending in *-ing*, two groups which scholars have agreed are characteristic of the earliest Germanic settlements. In the district of Freiburg i. B., Miedel rightly stressed the connection of place-names containing *-weil* and *-weiler* as a component with those containing *walch-*,[11] and drew the conclusion that here was a very old settlement continuing a Roman one. On the other hand we know that in Bavaria places ending in *-ing* belong to the earliest Germanic settlements. They appear not only in the most fertile districts, but by preference where settlements already existed in Roman times.[12]

The argument appears to be conclusive. Here also archæology has its say, and the excavations from prehistoric and early historic times are decisive. According to their evidence it is just those places with a *Walch*-designation which were settled at that time; in particular in the lake region of the Salzkammergut, not only Hallstatt, but the Attersee (Seewalchen) and the Mondsee (pile-dwellings),

[1] J. Strnadt, Über die Herkunft der Romanen des Ind. Arnonis, 23.
[2] Op. cit., 24.
[3] *Salzburger UB.*, i, 8, note 36.
[4] Ibid., i, 15, note 32.
[5] Ibid., i, 15, note 33.
[6] Ibid., i, 5, note 5; cf. 20, No. 10.
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[7] Ibid., ii, note 71.

[8] *Mainzer Zeitschr.*, xv–xvi (1920–1), 6.

east in a south-westerly direction, from Pannonia and the Rugiland, i.e. even from Noricum.

Even if we admit that the designation "Walch", "Wälsch" did not apply to Roman peoples alone, but also to any foreign immigrants,[1] so that its meaning is not too restricted and so that Walch may perhaps represent an old Bavarian proper name, Ualho, and the place designation Walchen mean "belonging to the clan of a Walaho",[2] we need not entirely give up the assumption that in the place-names in Walch we have a trace of old Roman settlement. It is certainly necessary to discriminate carefully and, as in all investigations of place-names, to pay special attention to the date of the records, and to the earliest word-formation. Careful scholarship, however, must not empty out the baby with the bath-water. Not all the numerous places ending in Walch are of later date, nor can they all be named after a Ualho. The fact remains that the Salzburg surveys of the end of the eighth century mention a *vicus Romaniscus* in the Salzburggau on the Saal, which is identical with the "Wals" west of Salzburg at the present day.[3] Furthermore, it is noteworthy that the same ancient source mentions many transfers of servile Romani on the Traun,[4] in the Attergau,[5] and on the Vöckla,[6] and if we identify these places according to the corresponding passages in the *Breves Notitiae*, or in later Urbar (manorial surveys), we find Walch places, Traunwalchen or Strasswalchen.[7] In the neighbourhood of Wals and Uualardorf[8] there are a number of places which are already mentioned in the *Indiculus Arnonis* and are obviously Latin word-forms. In places with Latin names, the same source indicates further transfers from tributary Roman peoples.[9]

Finally, other reliable evidence may be adduced to show that these Walch places are very old settlements of the pre-Frankish period. In those very districts there occur not only place-names ending in *-weil*,[10] but many ending in *-ing*, two groups which scholars have agreed are characteristic of the earliest Germanic settlements. In the district of Freiburg i. B., Miedel rightly stressed the connection of place-names containing *-weil* and *-weiler* as a component with those containing *walch-*,[11] and drew the conclusion that here was a very old settlement continuing a Roman one. On the other hand we know that in Bavaria places ending in *-ing* belong to the earliest Germanic settlements. They appear not only in the most fertile districts, but by preference where settlements already existed in Roman times.[12]

The argument appears to be conclusive. Here also archæology has its say, and the excavations from prehistoric and early historic times are decisive. According to their evidence it is just those places with a *Walch*-designation which were settled at that time; in particular in the lake region of the Salzkammergut, not only Hallstatt, but the Attersee (Seewalchen) and the Mondsee (pile-dwellings),

[1] J. Strnadt, Über die Herkunft der Romanen des Ind. Arnonis, 23.
[2] Op. cit., 24.
[3] *Salzburger UB.*, i, 8, note 36.
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again with Constantine, after which they are consecutive. Georg Wolff has now suggested the possibility that the smaller coins carrying a low value (these being the only coins considered here) come down from the Gallo-Roman population, who remained in the frontier lands conquered by the Germans, and who used these coins in the reviving trade which was being peacefully carried on along the line of forts after the advance of the Germans into the territory of the *Limes* was over.[1] Wolff based this supposition chiefly on observations which he made during his excavations in the Main territory. A number of other scholars have made similar observations in other neighbouring districts which have confirmed his theory.[2] We must of course be cautious in our judgments, so long as there is no exhaustive collection and examination of our numismatic material. The collection in the Taunus proves that coins of the second half of the third century are not entirely absent; and this appears to be the case also in Bavaria. Although the numerous discoveries of Roman coins in Bavaria have not yet been examined from the point of view of their provenance, nevertheless a similar phenomenon is sometimes found here also. There is a considerable gap in the second half of the third century (after 238), and the coins begin again with Constantine and continue through the fourth century. As it is in Swabian territory (*Rhætia secunda*) that this fact has been established,[3] it follows that there also the advance of the Alemanni caused no permanent interruption of the earlier conditions of civilization and of settlement. Moreover, it had already been shown that in the case of Swabia an interruption of this kind could not be deduced from the coins found there, and was indeed highly improbable.[4]

To this evidence may be added the great number of coins dug up near Pförring (on the Danube east of Ingolstadt in the direction of Regensburg), covering the period from Vespasian to Alexander Severus (A.D. 69–235).[5] Moreover, both barbarian *Reihengräber* and the remains of Roman military fortresses have been discovered in Überackern on the Salzach, while in the Kreuzlinden nearby, and in the *Natterngraben* near Aufhausen, coins of Constantine have been found.[6] Finally, there are the coins found near Lorch (Laureacum), in the neighbourhood of Enns, which are likewise continuous up to the fourth century.[7] Similarly, in the eastern frontierlands as far as Noricum, research has yielded results analogous with those obtained in the districts of the Rhine, Main, and Neckar, indicating a continuance of Roman settlement or, to be more exact, a commingling of early Germanic and late Roman colonization.

Another concrete result in this connection is shown by the excavations of industrial products, tools, and household goods of all kinds. Above all, the pottery of that early period illustrates the nature of the transition. It is well known how highly developed and how widespread the provincial Roman pottery industry was in the first centuries of the Christian era,[8] how it was practised

[1] "Die Bevölkerung des rechtsrheinischen Germaniens nach dem Untergang der Römerherrschaft," op. cit., 603 (1895), and "Über den Zusammenhang römischer und frühmittelalterlicher Kultur im Mainlande," *Einzelforschungen über Kunst- und Altertumsgegenstände zu Frankfurt a. M.*, i, 14 (1908).

[2] German edit., i², 142 ff.

[3] Cf. F. Binhak, "Römermünzfunde in Raetia secunda," *Progr. des kgl. Gymnasiums Passau*, 1900–1, 10.

[4] *Röm-germ. Korr-Bl.*, xii, 140 (1893).

[5] F. Weber, op. cit., xiv, 30.

[6] Cf. F. Kenner, *Mitteil. der k. k. Zentralkommission*, xi, p. lxxii (1866).

[7] Cf. F. v. Kenner, *Röm. Limes in Österreich* (*Numismatischer Anhang*), vols. vii–xi (1906–1910).

[8] For bibliography see German edit., i², 144, n. 216.

by the native population, and sent its products to the *Limes*, and even beyond. No doubt these pottery works may frequently have been brought to a standstill by the invasion of the Germans, indeed a complete stoppage may have been caused, as indicated by the fact that occasionally the excavations have brought to light unused stocks.[1] Equally important and extremely significant is the fact that in numerous German graves there is a mixture of Roman and German objects, the latter showing unmistakable signs of the influence of Roman technique.[2] Recently the gradual transference of late Roman potteries to the Franks has been proved by means of evidence afforded by an early Frankish grave of the beginning of the sixth century in Biebrich.[3] "The Roman potteries were not destroyed but continued to work." The changes demanded by the new owners took place quite gradually.

The same is true of the late Roman and the early German masonry, which even experienced scholars often find it very difficult to distinguish.[4] The artistic adornment of early Frankish pottery is also clearly derived from patterns in vogue in the Empire, and this is especially obvious in the so-called wheel-ornamentation.[5] It reappears usually about A.D. 300 and continues until the fifth century into the Alemannic or Merovingian-Frankish period, from which it was handed on to the Carolingians. In Schwarz-Rheindorf, near Bonn, proofs have been found of this continuity of pottery from Roman to Frankish times.[6]

The household utensils in daily use also deserve notice. The rich excavations in the Saalburg near Homburg vor der Höhe brought to light a quantity of tools and other iron utensils, which are so like those still used in Western Germany that their Roman origin was doubted by many. They are at any rate quite different from the shapes usual in the same class of object in North and East Germany.[7] The Roman keys excavated at Nida-Heddernheim are like the sliding locks which are customarily used to-day for house doors and garden gates in the Wetterau, and in the Alemannic or early Frankish graves at Sindlingen keys were found with the four-cornered handle characteristic of the later Middle Ages, whereas the shape of the key bits was clearly Roman. Finds in excavations of undoubtedly Roman sites at Flörsheim produced identical examples.[8]

A similar coincidence of the Roman and medieval utensils and tools used in the vine cultivation of the Rhine and Moselle districts has been shown in excavations at Cobern on the Moselle; wooden casks, vine-dressers' and coopers' tools, have come to light in company with coins of Hadrian's period.[9] The latest writer on the history of viticulture, Fr. Bassermann-Jordan, comes to the conclusion that "the migrations by no means destroyed vine cultivation. The Alemanni simply took it over from the Romans, and they had been trained for it for more than a hundred years previously.[10] Furthermore, the laws of the German tribes, recorded under the rule of the Merovingians, are valuable evidence that the Germans of the time entered into the inheritance of the Romans".

[1] This was specially emphasized by O. Hölder in *Die Formen der römischen Tongefässe diesseits und jenseits der Alpen* (1897).
[2] See German edit., i[2], 145 f.
[3] F. Kutsch, *Germania*, v, 27 (1921).
[4] Cf. F. Cramer, "Der ob. german. rätische Limes," *Röm. germ. Studien*, (1914), 49.
[5] See German edit., i[2], 146, n. 226.
[6] *Altert. unser. heidn. Vorzeit*, v, 131 f.
[7] Cf. L. Jacobi, *Das Römerkastell Saalburg bei Homburg v.d.H.*, 1897, 2 vols.
[8] Cf. G. Wolff, op. cit.
[9] Cf. F. Cramer, "Römisch-fränkische Kulturzusammenhänge am Rhein," *Annalen d. Histor. Ver. für den Niederrhein*, xci, 9 (1911). Achelis, *Bonn. Jhb.*, cxxvi (1921), 64.
[10] *Geschichte des Weinbaues unter besonders Berücksichtigung der bayr. Pfalz*, (1907), 44 ff.

Finally, glass-manufacture did not perish with the Romans, as was once thought, but continued, although with a coarser technique. Beads and other glass ornaments were used just as much as before.[1] In this connection attention should be drawn to the remarkable researches of Alois Riegl into late Roman industrial art in Austria-Hungary, a particularly exposed part of the Roman Empire, where the barbarian inundations were very strongly felt. Taking the period from Constantine the Great to Charles the Great as a single whole,[2] Riegl remarks that from the point of view of the history of art, it is "extremely misleading" to call it "the age of the migrations". He emphasizes the fact that in this respect there was a continuity from the Roman Empire to Charles the Great,[3] and that an advance rather than a retrogression had taken place. Even where there was a coarsening of technique or a loss of artistic competence, or where the previous Roman work seemed to have been destroyed, there are to be found transitional forms which are highly significant because they lead up to later modern forms.[4] This may be traced in detail.[5] Riegl is actually inclined to the theory that these objects were made for the German mercenaries by their Roman underlings, who understood and practised the Roman technique.[6] Thus research in the history of art has quite independently produced the same results as research in economic history.[7]

Anthropological research has also been used in various quarters to support the theory of a continuity of cultural development. The physique of the inhabitants of certain districts in Bavaria, with their dark eyes and hair and olive complexion has led to the conlusion that in former Roman settlements a large part of the Gallo-Roman population remained.[8] Similarly, the inhabitants of the Main district and the Wetterau, specially near Gross-Krotzenburg, have been thought by G. Wolff to be survivals of the Gallo-Roman population.[9] K. Schumacher showed the same for the Odenwald in Baden,[10] and F. Kauffmann in general for the old frontier territories between the Germans and the Romans, where the latter were called the "hunen", i.e. the dark or black people.[11] Similar observations have also been made in the modern Tyrol, especially in the centre of the Etsch territory, where the human types, as well as the place-names in neighbouring valleys, show a clear distinction between the descendants of the German tribes and those which remind us of the Romans.[12] Finally, traces of pre-German civilized peoples (Celts, Rhæti) have been observed in the physical peculiarities of the Salzburg people, a very brown type with dark hair and grey eyes, found also in the western half of Upper Austria, and in almost the whole of Carinthia, Krain, and the coast-lands.[13]

The results arrived at so far concerning the connection between Romans and Germans hold good primarily for the open country. What form did this relationship take in the towns? Was not the development here quite different?

[1] Cf. F. Cramer, "Über antike Glaskunst, namentlich im Rheinlande," *Röm.-germ. Studien*, (1914), 202 ff., and "Der obgerm. rätische Limes," ibid., 49.
[2] *Die spätrömische Kunstindustrie nach den Funden in Österreich-Ungarn*, (1901).
[3] Ibid., 9. [4] Ibid., 7. [5] See German edit., i², 148 f.
[6] *Spätrömische Kunstindustrie*, 170. [7] See German edit., i², 149, n. 239.
[8] H. Arnold in *Beitr. zur Anthropologie und Urgeschichte Bayerns*, xiv, 98.
[9] Wolff, op. cit., 603. [10] *Mainzer Zeitschr.*, ii, 15.
[11] "Hünen," *Zeitschr. f. Deutsche Philol.*, xl, 276 ff.
[12] Cf. J. Egger, "Die Barbareneinfälle in die Provinz Rätien und deren Besetzung durch Barbaren," *Archiv. für Österr. Geschichte*, xc, 93 (1901).
[13] G. A. Schimmer, in *Mitteil. der Anthropologischen Gesellschaft*, Wien, suppl. i (1884).

For a long time it was assumed by scholars, especially by those dealing with the legal and constitutional history of medieval German towns, that the Roman towns had been completely destroyed by the Germanic invasions and had fallen into ruins, and that the barbarians, to whom town-life was repugnant, had levelled them to the ground, so that later German urban civilization arose independently and on a new basis, without any connection with the Romans. Various circumstances contributed to form this theory. The catastrophic theory of German barbarism originating with the Humanists, helped in its creation; it was one of the elements of the new French history of civilization in the seventeenth and eighteenth centuries (Montesquieu and Voltaire); and in Germany also it was readily accepted, because it fitted in with the idea of primitive German freedom, with the new research into German agrarian history (J. J. Möser), and with the later association theory and the more recent sociological tendencies. The unlimited freedom of the half-nomadic Germans could ill be reconciled to confinement within city walls! Moreover, there was the direct evidence of Roman authors that the old Germans showed a distinct dislike for the towns. Tacitus mentioned as one of their characteristics that they did not live in towns or have even enclosed settlements.[1] In another passage he gives something like the "free-German" explanation of this, for he makes the Rhenish Tencteri lay down as a condition of peace with the Romans, that the inhabitants of Cologne should demolish the city walls, which are described as *munimenta servitii*, the reason for the demand being that even wild animals lose their strength if they are caged.[2] Another fact which seemed to support this view was that in the fourth century description of Julian's wars with the Alemanni in 356, Ammianus Marcellinus says that the latter feared the towns as pits surrounded by nets, which meant the grave of their freedom.[3]

This earlier theory, which is still often met with, could not be held without modification. It was impossible to overlook the fact that according to Greek writers the Germans also possessed πόλεις. Even though Ptolemy may have been mistaken in understanding "places where there was a certain amount of commerce" to have been towns, and in naming them, the fact remains that other authors, such as Herodian in the third century, also mention πόλεις as being *besides* κῶμαι (villages).[4] Hence it must be acknowledged that "in the empires set up after the migrations in Gaul, Italy, and Spain, the Franks, Burgundians, East and West Goths, and Lombards lived not only on the land but also in towns". And recent research into urban legislation has given a special position to the old Roman towns on the Rhine, because it has come more and more to be recognized that there a connection with later German forms could not be denied.[5]

Then came the great archæological investigations in the Rhine and Main territories and also in the Danube districts, with their thorough examination and revision of historical topography, which for the first time provided a firm basis for deciding this important question. We need not here discuss the great problem of the origin of German municipal government, but may begin by putting together the evidence provided by the science of the spade as to the transition period from Roman to German times in certain great Roman towns.

[1] *Germania*, c. 16. [2] *Histor.*, iv, 64. [3] xvi, 2, 12.
[4] Cf. also Müllenhoff's *Deutsche Altertumskunde*, iv, 281 (1900).
[5] See German edit., i², 152.

Apart from the above problem the main question to be considered is that of economic development. Here Cologne must be placed in the foreground, for in more than one direction it is a model example of our knowledge, and research has made great strides there. The old Roman town, Colonia Agrippina, was destroyed in 355 by the barbarians after an obstinate siege; Ammianus tells us so without any doubt.[1] As a consequence it was for long believed that Cologne had been completely demolished. But great caution must be used in dealing with the accounts of these early writers, for it is noteworthy that various towns which they state to have been destroyed, appear later in their own writings, sometimes indeed very soon afterwards, as being inhabited, and even as affording protection against a fresh attack. We cannot therefore take "destruction" in these accounts to mean a complete demolition. The contradiction in the case of Cologne is especially remarkable; for the same Ammianus, who declared that the town was destroyed in 355 by the Alemanni, gives under the following year (356) this very characteristic description of it, in which he says of the Emperor Julian: *Igitur Agrippinam ingressus non ante motus est exinde, quam Francorum regibus furore mitescente perterritis pacem firmaret rei publicae interim profuturam et urbem reciperet munitissimam. Quibus vincendi primitiis laetus per Treveros hiematurus apud Senonas oppidum tunc opportunum abscessit.*[2] So we have *excisa* and *munitissima* at the same time! In the year after the "destruction" Julian could again enter the town and stay there with his army for a considerable period, and in spite of it all Cologne was in 356 a "well-fortified town", the reconquest of which is praised by Ammianus as a happy success of the Romans. It is clear that the words *delere* and *excindere* in Ammianus need not be taken in the sense of a complete razing or demolishing; and this gives food for thought in dealing with other similar accounts. In this connection it may be observed that under the year 359 Ammianus relates that the Emperor Julian again took possession of seven Rhenish towns (mentioned by name), and restored their walls, stipulating for this purpose that the Alemannic chiefs should bring building material with their own teams.[3] Therefore the rebuilding of the walls was very soon begun and the destruction was made good.

In the case of Cologne in particular, scholars have assumed that in the early German period a pasture lay over the site of the ruined town. They adduced in support of this the name of one of the quarters of the town, "Berlich," and explained the first syllable *ber* as Eber (boar), which was held to indicate the existence of a swine-pasture. But in the year 1908 a votive stone, belonging to the second century A.D., was dug up at Cologne; it had been dedicated to Diana by a centurion named Tarquitius, who with his *venatores* had caught fifty bears in one winter for the *vivarium* of the colony.[4] Fr. Cramer considered this an important argument for deriving the name Berlich from Bero-leich (bear-play), and from it he concluded that there was an amphitheatre in Cologne at that time.[5] But if the derivation of Berlich from boar-pasture is untenable, this proof of the destruction of the Roman town falls to the ground.

If this name of a quarter of the town, handed down without interruption through the centuries, shows a certain continuity of colonization, a whole series

[1] xv, 8, 19. [2] xvi, 3, 2. [3] Op. cit., xviii, 2, 3–6.

[4] Cf. A. v. Domaszewski, "Das Vivarium von Köln," *Röm.-germ. Korr. Bl.*, ii, 65 (1909); also CIL, xiii, 12048 (1916).

[5] "Römisch-fränkische Kulturzusammenhänge am Rhein," *Annalen d. Histor. Ver. für den Niederrhein*, xci, 4 (1911).

of other facts supports the same theory. The episcopal cathedral of St. Peter, which was the parish church for the great diocese of Cologne down to Carolingian times, stood in the same part of the town which had contained the most important buildings in Roman times. The Franks even allowed the Roman walls to stand; and when the Normans in the ninth century attacked and ravaged Cologne, their value was realized, for it was considered that the old walls needed only to be repaired, not to be rebuilt.[1] Even after the destruction of Roman power by the Franks, a part of the Romano-Christian population remained living quietly in the town.[2] Furthermore, in spite of frequent destructions of Cologne by the Normans, the street-plan of the Roman town by no means disappeared, and is still recognizable in the present streets. The direction, and to some extent the characteristic names of the streets (for example, Steinweg = stone-way), are of Roman origin.[3] The parish churches within the town lie on Roman roads, not in the open squares but among the rows of houses on these streets (St. Kolumbo, St. Laurenz, St. Alban).[4] Here, too, the continuity of development is clearly proved, as it is also by what we know of St. Gereon's church. This used to be dedicated "To the golden martyrs" and was one of the oldest churches in Cologne; in Merovingian times it was the Chapel Royal of the Frankish kings. At the end of the sixth century Gregory of Tours gives a description of the splendid mosaics, glittering with gold, in this house of God,[5] and it is probable that they came down from the late Roman period, at which time that particular form of art was in frequent use[6]; it is very unlikely that they originated during the Merovingian age. Further traces of the connection with late Roman times, the well-endowed collegiate or parish churches, their patron saints, and the Roman names by which the churches were known among the people, have been pointed out by K. H. Schäfer.[7]

In the case of Neuss, the great excavations on the site of the old Novæsium have shown that considerable portions of the encircling wall, which remained throughout the Middle Ages until modern times, date from the last period of Roman rule.[8] There, too, Celtic settlements existed in pre-Roman times[9]; and on the other hand the town remained standing throughout the Merovingian period.[10] Düren has not only numerous Roman remains but also a Frankish cemetery, showing the continuity of settlement there.[11] Andernach (Antunnacum), the old Celtic site, where there is evidence of megalithic graves (Schumacher, *Siedlungs-u. Kulturgesch. d. Rheinl.*, 32, n. 17) was newly fortified at latest under Diocletian (end of the third century). In the fourth century it played an important part under the Emperor Julian; at the beginning of the fifth century the military importance of the town appears in the *Notitia Dignitatum*. Its continuance during the Merovingian period is proved not

[1] H. Keussen, "Untersuchungen zur älteren Topographie und Verfassungsgeschichte von Köln," *Westd. Zeitschr.*, xx, 16 (1901).
[2] K. H. Schäfer, "Kirchen und Christentum, Köln." *Annal. d. Histor. Ver. f. d. Niederrhein* xcviii, 65.
[3] H. Keussen, *Topographie der Stadt Köln im Mittelalter* (1900), i, 9.
[4] K. H. Schäfer, op. cit., 115.
[5] *Liber in gloria Martyrum*, c. 61, MG. SS. rer. Merov., i, 530.
[6] F. v. Cramer, *Ann. d. Histor. Ver. f. d. Niederrhein*, xci, 3 ff.
[7] Op. cit., 32 f., 68 f.
[8] Cf. Koenen, "Novaesium," *Bonner Jahrbücher*, cxi–cxii (1904), 128.
[9] Cf. F. Cramer, "Novaesium," *Röm.-germ. Studien*, 1914, 200 ff.
[10] H. Nissen, "Novaesium," *Bonner Jahrbücher*, cxi–cxii, 6, and K. H. Schäfer, op. cit., 55.
[11] Cf. A. Schoop, *Geschichte der Stadt Düren*, 1901, and *Bonner Jahrbücher*, 1907, 291 f.

only by the debris from a fire found in a tower, but by the poet Venantius Fortunatus in the sixth century. The Merovingian kings were very comfortable in the old Roman stronghold.[1]

The connection between Roman and early German culture is to-day even more clear in the case of Mainz than in that of Cologne. As we know from Ammianus,[2] there was already a bishop there in 368. Various fifth-century writers besides Salvian of Marseilles describe the town as *excisa* and *deleta*,[3] and other sources also speak of its destruction.[4] In spite of this we hear a century later from the poet Venantius Fortunatus that "old churches" still existed which seemed in need of repair.[5] In Mainz the continuance of settlement, in spite of successive waves of migration, is proved beyond a doubt.[6] Excavation has shown that the church of St. Alban, famous in Carolingian times, was erected on the site of an earlier Christian sanctuary, for a number of early Christian tombstones with inscriptions, of which the oldest belongs to the fourth century, have been found walled up in the foundations of Carolingian parts of the church. Neeb concluded from this, and from the close connection which prevailed in early Christian practice between the cult of the dead and sacred buildings, that as early as the fourth century a Christian place of worship must have stood on Sankt-Albans-Berg.[7] The evidence of numerous Merovingian graves of the sixth century has shown that, between the late Roman building and the eighth-century Carolingian church, there must have been, in the sixth and seventh centuries, a wooden church built on the same plan.[8] The tombstones which were found in Mainz in 1907 and 1908, show a line of development in a very characteristic fashion. They belong to the Roman and early Christian period.[9] According to their inscriptions they range from the first century through the following centuries into the Frankish period of the eighth century. At first we meet only Roman or Romano-Celtic names, then Roman and Germanic names simultaneously, finally only Frankish names.[10] The invasion of German elements, and the substitution of a Franco-German community for the older Roman one, becomes evident. At the same time we see that in the fourth and fifth, and indeed in the sixth and seventh centuries, Roman speech and customs lived on still; Provincials and Germans dwelt peacefully side by side, united in Christianity. Documentary evidence shows that in the eighth century Mainz was surrounded by walls. These fortifications can hardly have been completely new so that here again it must have sufficed to keep the old Roman walls in repair.[11] Moreover, the Roman road, the main trade route from the legionary fortress to the Rhine bridge (Emmeränstrasse), has remained. On it there stand

[1] H. Lehner, *Bonner Jahrbücher*, cvii (1901), 34.
[2] xvi, 2, 12. [3] *Lib.* 6, 8, MG. AA. i, 74.
[4] Cf. *Hieronymi epist. 123 ad Ageruchiam* (ed. Vallarsi, 1766): "Maguntiacum nobilis quondam civitas capta atque subversa est."
[5] *Lib.* ii, No. 11, and ix, No. 8, MG. AA. iv, 40, 215 f.
[6] J. Sauer, "Die Anfänge des Christentums und der Kirche in Baden," *Neujahrsblätter der Badischen Historischen Kommission*, new edit., xiv, 22 (1911).
[7] "Zur Baugeschichte der St.-Albans-Kirche bei Mainz," *Mainzer Zeitschr.*, iii, 74 (1908). and "Bericht über die Ausgrabungen der St.-Albans-Kirche bei Mainz im Jahre 1908," ibid., iv, 34 ff. (1909).
[8] Cf. G. Behrens, "Merowingische Grabfunde von St. Alban in Mainz," *Mainzer Zeitschr.*, xv–xvi, 70 ff. (1920–1).
[9] Cf. Körber, "Die im Jahre 1907 gefundenen römischen und früh christlichen Inschriften und Skulpturen," ibid., iii, 1 ff., and ibid. for 1908, iv, 14 ff.
[10] Cf. F. Cramer, *Ann. d. Histor. Ver. f. d. Niederrhein*, xci, 5 f.
[11] Koehne, *Der Ursprung der Staatsverfassung in Worms, Speier, und Mainz*, xxxi, 4 f.

several old churches (St. Emmeran, Reiche Clara, and the Carmelite monastery), and it is bounded by the Jews' quarter, which has kept its former site.[1]

The excavations in Frankfurt am Main are especially interesting,[2] for it used to be thought that in Roman times the territory of this town was uninhabited because the Main had flooded it, and therefore Frankfurt was looked upon as a new Frankish foundation. But many Roman remains have now been found on the site of the town itself. It has been discovered that on the cathedral hill there stood a fort built by the Emperor Domitian in the war against the Chatti (83–4), near which a camp-village stretched westward along the modern market-place. Here also it can be proved that the street-plan of the old town of to-day, converging towards the cathedral hill, goes back in part to the Roman military roads which led from the Taunus, from Heddernheim (Nida), and from the Wetterau to the fort. When the old Western railway stations were pulled down, a Merovingian cemetery was opened up; and on the other hand, near the covered market in the extension of the Steingasse, early Frankish or Alemannic graves were found. G. Wolff rightly concluded that the Roman roads were still used at that time and that a continuity of settlement could be assumed in this case also.

The same is true of Worms, where parts of the old Roman town walls are preserved.[3] The documentary evidence, forthcoming as early as the eighth century, presumably refers to them.[4] In 409, after a long siege by the Germans (Vandals, Alans, Alemanni), the town was taken and, in the words of the sources, "destroyed."[5] Here, too, however, there can be no question of a real destruction as is clearly shown by the fact that soon afterwards, about 413 to 436, Worms was the capital of the Burgundian kingdom. The Burgundians found there an organized Christian community.[6] Now various cemeteries have been excavated in the south, west, and north of the town, which belong to the Merovingian period and follow after late Roman cemeteries. They prove that the Burgundians, to whom Schumacher partly ascribes them, settled within the Roman (and modern) town-site. "In Worms," he says, "the German cemeteries seldom destroyed the Roman ones, which are still recognizable; they simply continued them." The fact that the Frankish cemetery in the north of the town was most used is evidence that the old town site was also retained in German times. This theory is confirmed by a comparison between the medieval and the Roman street-plans. Two Roman main streets, which crossed the town from north to south, have been retained until to-day, with several cross-streets as the most important thoroughfares. These are the Kämmererstrasse (or Speyrer-strasse), the Zwergstrasse, and the Römerstrasse. Further, it is significant that these streets contain the oldest churches: the cathedral, and the Magnuskirche, Andreaskirche, and Martinskirche are in the Kämmererstrasse, the Pauluskirche and Augustinerkirche in the Römererstrasse. Moreover, adjoining all these, just behind the Mainz Gate, lies the old Jewish quarter. At the highest point of the

[1] Cf. K. Schumacher, "Beitr. z. Topogr. u. Gesch. d. Rheinlande," *Mainzer Zeitschr.*, v, 19. See also German edit., i², 159 ff.

[2] Cf. G. Wolff, "Über den Zusammenhang römischer und frühmittelalterlicher Kultur im Rheinlande," op. cit., 1 (1908), and *Frankfurt a. M.* (Herdscheis, *Luginland*, vol. xli), 1913.

[3] Cf. C. Köhl-Weckerling, *Röm. germ. Korr.-Bl.*, ii, 77 ff. (1909); Weckerling, *Korr. Bl. d. Ges. Ver.*, 1910, 26; and K. Schumacher, "Beitr. zur Topographie und Geschichte der Rheinlande," *Mainzer Zeitschr.*, v, 18 (1910).

[4] Cf. Koehne, *Der Ursprung der Staatsverfassung in Worms, Speier und Mainz*, 4.

[5] Cf. *Hieronymi epist. ad Ageruchiam* (ed. Vallarsi, 1766).

[6] Hauck, A., *Kirchengeschichte Deutschlands*, i², 36.

town, namely the cathedral square, fragments of buildings have been excavated, which may be Merovingian.[1] They may have belonged to the Basilica of St. Peter which was patronized by King Dagobert. There is evidence that there was a bishop in Worms in 614; and according to local tradition the bishop's palace (Saal) stood opposite the cathedral square. In Carolingian times there was a royal palace in Worms in which Pippin and Charles the Great often stayed; the latter celebrated his marriage with Fastrada there. It probably stood in the north-eastern part of the city near the Römerstrasse.[2]

The work of destruction is depicted as having been much more terrible in Trier than in Cologne, Mainz, and Worms. Salvianus of Marseilles describes this *urbs Gallorum opulentissima* as being completely in ruins in the fifth century. *Excidium civitatis, rerum ruina!* [3] He actually speaks of the burning and downfall of the town and of the massacre and captivity of its inhabitants, among whom only lamentation and misery could be found.[4] But about the same time, the middle of the fifth century, Bishop Appollinaris Sidonius, the well-known provincial poet, writes to the Frankish count Arbogast, who was ruling there, in the most flattering terms, saying that he can wield the pen as well as the sword. This praise may be exaggerated and may have been largely due to the fact that Arbogast himself had become a Christian; but if we look into the matter more closely, we see that expressions are used to which a deeper meaning must surely be given. He is praised because with him the old Roman speech, lost to the Rhine lands, had yet found a home, although the *Latina iura* had lapsed there, and because in him at least traces of the now declining intellectual aspirations were still to be found.[5] To this we must also add the letter of Bishop Auspicius of Toul, who praises the same Frankish count just as fervently, and addresses him as *fili sapiens*. The fact that here, too, a comparison is made with Roman conditions and that his rule over the town is actually considered to equal them,[6] shows what a close connection must still have existed, and must indeed have been aimed at, by the Franks. The letter ends with a greeting to the Bishop (*papa*) Iamblychus of Trier. It is clear that here, too, an old Christian community had persisted into the Frankish period, and that is the reason why the Christian Arbogast was so highly praised in these letters, and his merits in this respect extolled above his other deeds. Excavations in the Roman amphitheatre of the town since 1905 have brought to light cellar-foundations with pavements which prove that they were used again after Roman times. Most probably these cellars were used for Christian religious purposes. Of three ivory pyxides found here, two have old pagan ornamentation; the third is Christian, and shows Syrian work of the fourth century. Further evidence of the religious use of cellars is given by a Christian inscription on another find made of leather, belonging to the Carolingian period.[7]

These views are supported by the similarity between these cellars and those found in Metz. The capital of Lorraine was also at first thought to have been

[1] Schumacher, op. cit., 19.

[2] Here, in the old territory of the Limes, the continuity of development may be clearly traced even in the smaller towns. An especially good example is Ladenburg (east of Mannheim on the Neckar). See German edit., i², 162 f.

[3] *De gubernatione Dei*, vi, 13, MG. AA., i, 79 ff.

[4] vi, 15, §. 88; ibid., 81.

[5] Ibid., viii, 68, No. xvii.

[6] Migne Patrol. Lat., 61, 1007.

[7] Cf. E. Krüger, Trier, "Der Arenakeller des Amphitheaters," *Röm.-germ. Korr.-Bl.*, ii, 81 ff. (1909).

razed to the ground and to have perished during the migrations. This opinion was based chiefly on the account of Gregory of Tours, who says that in 451 Attila burnt the town and massacred the people, so that except for the Oratorium of St. Stephen nothing remained.[1] G. Wolfram has already pointed out that this account can hardly be taken literally.[2] The fact that King Theodoric, Clovis' eldest son, chose Metz as his royal residence, shows that there must have been settlements there. Sixty years later Venantius Fortunatus described Metz as a flourishing town, and he himself saw its walls,[3] which are mentioned also in eighth-century records.[4]

The regularity of the streets of Metz points to the influence of the old Roman roads,[5] and important results have also been arrived at by means of the excavations of 1897 and 1898 on the site of the former abbey-church of St. Peter in the citadel.[6] The tiles found here were stamped in the fourth century (tiles of the so-called Adiutex),[7] and appear from early Christian times side by side with Merovingian carvings.[8] The excavations in the great Roman amphitheatre have added surprisingly to this evidence. It appears that here, as elsewhere, the ruins of the Roman amphitheatre were used by the earliest Christian communities. Here also were the places of Christian martyrdom. A rectangular pillared building, rather like a cellar, was found under the arena, the material for which had been taken from the amphitheatre, and which was probably an old Christian oratory (glass mosaic).[9] It seems possible to connect this with Christian traditions concerning the oratorium of St. Clement, who *in cavernis amphitheatri hospitium habuit*, a legend which was already firmly established in the eighth century and is found in Paulus Diaconus.[10] Christian inscriptions have been found on tombs in this building.[11] This first Christian church in Metz does not, as the legend would have it, belong to the apostolic times of St. Peter himself, but it dates at any rate from the fourth century, the time of the Emperor Constantine. Near this ancient building, perhaps within the circular walls of the theatre, the later church of St. Peter was built; its name in the oldest records, *in theatro* or *ad arenas*, points to a close connection with the amphitheatre, without its necessarily having stood on the same site, like the old oratory of St. Clement.[12] Finally, numerous Roman graves have been found under the floor of Metz Cathedral.[13] Thus there is more than one proof of a continuity of development in this city.

On the Upper Rhine, Strasburg (Argentoratum), the fortress on the Ill, was of great importance in Roman times. In the highest part of the town, near the cathedral, stood the *castra*; out of them and dependent *canabae* the later town was developed. Even as early as the eighteenth century excavations revealed fragments belonging to the Roman period. Moreover, those excavations which were carried out on Michaelsbühl outside the town were of primary

[1] Lib. 2, chap. 6, MG. SS. rer. Merov., i, 68.

[2] "Die räumliche Ausdehnung von Metz zu römischer und frühmittelalterlicher Zeit," *Jahrbuch der Gesellschaft für lothringische Geschichte und Altertumskunde*, ix, 138 (1897).

[3] MG. AA., iv, 65 f., No. xiii. [4] Wolfram, op. cit., 129. [5] Ibid., 148 f.

[6] Cf. E. Knitterscheid in *Jahrbuch für lothringische Geschichte*, x, 120 ff.: "Die Abteikirche St. Peter auf der Zitadelle in Metz."

[7] Ibid., 129. [8] Ibid., 141 ff.

[9] E. Schram, G. Wolfram, J. B. Keune, "Das grosse römische Amphitheater zu Metz," *Jahrbuch für lothringische Geschichte*, xiv, 340 ff. (1902).

[10] Wolfram, ibid., 355. [11] J. Keune, ibid., 384 ff. [12] Wolfram, op. cit., 368.

[13] Cf. Schmitz, "Aufdeckungen im Dom zu Metz," *Jahrbuch der Gesellschaft für lothringische Geschichte*, xxvi, 474 ff., especially 486. Also *Röm.-germ. Korr.-Bl.*, viii, 60 ff. (1915).

importance, because, besides undoubtedly Roman objects, tiles were also found with the inscription *Arboastis episcopus fecit.*[1] Not only does this bear witness to the Frankish Bishop Arbogast, who lived towards the end of the sixth century, but it shows at the same time the nature of the transition from the Roman to early Christian-German times. In the former period the military authorities provided the building material and put the stamp of the legion on the tiles; in the latter the Church took their place.[2] Here as elsewhere the bishopric formed the connection between the ancient world and the early Middle Ages.

Later finds, in the old part of the town,[3] belonging to the migratory and early Christian, as well as to Merovingian and Carolingian times, have shown that the new post-Roman culture is most easily recognizable in the old Roman fortress with its ramparts and ditches.[4] The earliest Alemannic settlement did not lie outside the gates of the Roman town, as used to be thought, but developed on the site which had been built upon in Roman times, i.e. close to the cathedral on its north and south sides, and directly above the camp of the Roman legion on the cathedral hill which is the oldest part of the town.[5] It appears that in the fourth and fifth centuries Romans and Alemanni lived side by side in the town and settled outside its walls. Some early Christian finds of the fifth century [6] are important, as they illustrate the transition to the Frankish period and in particular show that the "destruction" of Strasburg by the Vandals in 406 could not have been a complete demolition, and that here also a Christian community continued to exist throughout the "storms of the migrations".[7] The town comes to the fore especially under the Merovingians; Childebert stayed there several times [8]; Egidius of Rheims was banished there [9]; and a certain Bishop Ansoald of Strasburg was at the Synod of Paris in 614.[10]

The town of Basel also illustrates in a characteristic fashion the nature of the transition from antiquity to the Middle Ages,[11] and the bishopric of Chur, too, is of Roman origin. It is first mentioned in 452, and a bishop is spoken of there in an inscription of 548. The fact that a bishop of Chur took part in the Paris Synod of 614 again shows continuity with the Frankish period.[12]

This continuity may also be assumed for the town of Constance, on Lake Constance. It is by no means a foundation of late Roman times, as its name formerly led people to believe. Recent excavations have brought to light potsherds and coins belonging to an earlier period, about the end of the first or beginning of the second century.[13] They run from that period down to the end of Roman rule [14] and are found in the cathedral square, indicating therefore

[1] See German edit., i², 167, n. 323.
[2] Cf. Joh. Ficker, "Altchristliche Denkmäler und die Anfange des Christentums im Rheingebiet," *Strassburg, Univ.-Schr.*, 1909, 6.
[3] Cf. *Denkmäler der elsässischen Altertumssammlung, herausgegeben von J. Ficker*, p. viii, Table ii, also A. Hauck, *Kirchengeschichte*, i²; 36, n. 4.
[4] Henning, "Aus den Anfängen Strassburgs." *Festschr: zur 46. Philolog. Strassburg* 1901, 83.
[5] Ibid., 81 f. [6] Cf. *Westd. Zeitschr.*, xx, 300 (1901).
[7] Cf. also A. Hauck, *Kirchengeschichte Deutschlands*, i², 36, note 4.
[8] Gregor v. Tours, *Hist. Franc.*, ix, 36. [9] Ibid., x, 19.
[10] MG. Concil., i, 192. [11] See German edit., i², 168 f.
[12] See A. Hauck, *Kirchengeschichte*, i², 321, n. 4; Kraus, op. cit., i, 2, No. 4; and MG. Concil., i, 192.
[13] Cf. K. Schumacher, "Zur römischen Keramik u. Geschichte Südwestdeutschlands," *N. Heidelberger Jahrbücher*, viii, 95 f.
[14] L. Leiner, "Die Entwicklung von Konstanz," *Schrift. d. Ver. f. Gesch. d. Bodensees*, xi, 73 ff., esp. 81 ff.

that here, too, Christian development took place on the ancient Roman site. It is particularly significant that Roman coins of the second half of the third century have been excavated,[1] a piece of evidence which refutes the hypothesis, based on the supposed lack of such remains, that there was an interruption of Roman culture at that time.[2] The fact that about the middle of the sixth century the bishopric, which hitherto was in the Roman Windisch (Vindonissa), was transferred to Constance,[3] is an indication of the importance of the town, which therefore cannot meanwhile have been wiped out or destroyed by the Germans. Moreover, it is described as a *civitas* in the seventh century, in the Cosmography of the anonymous geographer of Ravenna.[4]

Kempten, the Roman Campodunum, must be briefly mentioned here, because the most recent excavations have proved that the earliest medieval Kempten developed on the fortress-hill site, and on the modern left (west) bank of the Ill the remains of the later Roman Campodunum have come to light.[5]

Augsburg was widely known in Roman times as a centre of Rhætia Secunda, and also as a trading place with the neighbouring Germans, especially the Hermunduri to the north.[6] Numerous excavations and finds of coins show clearly that Roman life continued here to the end of the fourth century.[7] Indeed, the coins run through the whole of the third and fourth centuries and into the fifth.[8] It is extremely improbable, for more than one reason, that the town was then completely destroyed by the Alemanni. Augsburg is mentioned in the *Tabula Peutingeriana* and is distinguished by two towers.[9] It is probable that the Alemanni settled here peacefully and did not drive out the provincials, who remained in their homes, as is also proved by the records of Theodoric's time. He organized Rhætia as an important bulwark for the protection of Italy and settled Alemanni there, who fled before the Franks after the battle of 496. He gave directions to his representatives in Rhætia that the garrisons there *vivant cum provincialibus iure civili*.[10] A. Hauck has further shown that the Christian community in Augsburg goes back to the time before Constantine, and that it outlasted the Roman rule and the Alemannic conquest, and "gradually changed from Roman to German".[11] Even if we were inclined to assume that there was an interruption of the bishopric there in the sixth century, the continuance of the Christian community itself, and of the worship of the blessed Afra, seems to be proved for the second half of the sixth century by Venantius Fortunatus. In the seventh century the anonymous geographer of Ravenna calls Augsburg a *civitas*,[12] and this is confirmed by eighth-century sources.[13]

[1] Cf. Conrad Beyerle, "Zur Geschichte des röm. Konstanz," ibid., xix, 131 (1890).
[2] Cf. above, 67 f. [3] Cf. A. Hauck, op. cit., i[5], 322. [4] Ch. iv, § 26.
[5] P. Reinecke, "Campodunum," *Röm.-germ. Korr.-Bl.*, v, 17 ff. (1912); and his "Beitr. zur Geschichte Rätiens in der römischen Kaiserzeit," *Zeitschr. d. Histor. Ver. für Schwaben und Neuburg*, xxxix, 12 ff. (1913).
[6] Cf. above, 63. [7] See German edit., i[3], 171, n. 358.
[8] Cf. Grosshauser, "Die römischen zu Augsburgge fundenen Münzen," *Zeitschr. d. Histor. Ver. für Schwaben und Neuberg*, iv, 232 ff. (1878).
[9] Cf. E. Berner, "Zur Verfassungsgeschichte der Stadt Augsburg." *Untersuchungen zur Deutschen Staats- und Rechtsgeschichte von O. Gierke*, v, 16 (1879).
[10] Cf. F. Baumann, "Die alemannische Niederlassung in Raetia secunda," *Zeitschr. d. Histor. Ver. f. Schwaben u. Neuberg*, ii, 172 ff. Also Jos. Egger, op. cit., *Arch. für österr. Geschichte*, xc, 336 ff.
[11] *Kirchengeschichte Deutschlands*, i[2], 93; ii, 64 f.
[12] Cf. L. Wirtz, "Franken und Alemannen in den Rheinlanden," *Bonner Jahrbücher*, cxxii, 226 ff. (1913).
[13] Cf. MG. Epp., iii, 292 (c. 737).

Later excavations provide proofs, hitherto lacking, for a period in which no other sources are available. For example, the long barrows found in various places in the neighbourhood of Augsburg show that the Alemannic immigrants were good farmers, who obviously settled on the fertile loess soil.[1] On the other hand, Merovingian finds were made on the site of the Roman town, a sign that it was at that time continuously settled.[2] The opinion has recently been advanced that the famous old bronze door of the Augsburg cathedral was a product of Ravenna art, closely connected with late Roman art and belonging to the time of Theodoric the Great, who may perhaps have commissioned the work.[3] This would of course be a very important conclusion; but in view of the dates given so far, it seems wiser not to express an opinion until the facts are clearer. At any rate it is noteworthy that at Epfach (Abudiacum), which lies south of Augsburg, on the Roman road, early Christian remains of the fifth century have been found among the excavations.[4]

On the Danube, Regensburg maintained its position as a town from Roman times onward.[5] Among the numerous excavations undertaken there for many years past, the great cemetery to the west of the town on the road to Augsburg claims our especial interest. A craniolological study of its skeletons, which date from the second to the fourth centuries, has clearly shown a mixture of dolichocephalic Germans with brachycephalic Romano-Rhætians,[6] of such a kind that a continuous increase of Germans is obvious. It has already been presumed that after the invasion of the *Limes* (at the beginning of the third century) a large peaceful German settlement of the upper plains of the Danube took place, and the towns were Germanized also by reinforcements from the country.[7] This view is supported by the fact that among the numerous pottery-marks found in old Roman sites in Bavaria, a large percentage of German names appears side by side with Romano-Rhætian ones.[8] Early Christian monuments have been found on the very site of the Roman castrum, as for example the church of St. George, with its excavations on the site of the southern transept, and those near the ancient parish church of St. Cassian.[9] There is an old legend that a temple of Juno stood on the site of the chapel in Roman times.[10] Regensburg was probably never destroyed. Even in the eighth century Aribo of Freising describes the town as "an impregnable fortress, built of hewn stone and guarded by towers".[11] Hrabanus mentions it in his poem to Bishop Baturic, *Urbem Regensem minitantia moenia caelo.*[12] King Lewis the German caused these walls

[1] Cf. v. Rad, "Die Inventarisation der Bodenaltertümer aus vorrömischer, römischer, germanischer und frühmittelalterlicher Zeit in der schwäbischen Umgebung Augsburgs," *Zeitschr. d. Histor. Ver. für Schwaben und Neuburg*, xxxvii, 173 (1911).

[2] Cf. Reinecke, *Korr.-Bl.*, v, 23 (1912).

[3] See O. Roger, *Zeitschr. d. Histor. Ver. f. Schwaben u. Neuburg*, xli, 145 (1915).

[4] Cf. Endres, "Eine altchristliche Darstellung des Guten Hirten im städtischen Museum zu Augsburg," *Archäologische Ehrengabe der Röm. Quartalschr. zu de Rossis 70. Geburtstag*, 1892, 114 ff.

[5] See German edit., i[2], 173, n. 37.

[6] Cf. H. Lamprecht, "Der grosse römische Friedhof in Regensburg," ibid., lviii, 1 ff. (1907). Also v. Hölder, "Die Skelette des römischen Begräbnisplatzes in Regensburg," *Archiv. für Anthropologie*, xiii, suppl., 24.

[7] Franziss, *Bayern zur Römerzeit* (1905), 408 f.

[8] Cf. Harbauer, "Töpferstempel von Faimingen und Schretzheim," *Jahresberichte d. Histor. Ver. Dillingen*, viii, 111 ff. (1895).

[9] Cf. A. Ebner, "Die ältesten Denkmale des Christentums in Regensburg." *Ehrengabe für de Rossi*, 173 ff. Cf. also *Verhandl. d. Histor. Ver. von Oberpfalz und Regensburg*, 45 (1893).

[10] H. Arnold in *Beitr. zur Anthropol. und Urgeschichte Bayerns*, xiv, 96 (1902).

[11] *Vita Emmerami*, chaps. iv and vi.

[12] MG. Poetae lat. ii, 173.

to be partly broken down, so as to use the stones for the Marienkirche.[1] According to the ninth century account of the Monk of St. Gall, he dug up old graves containing rich treasures of gold, which lay just inside the Roman town wall south of the St. Stefanskirche (the " old cathedral ") and which were possibly the graves of the Bavarian Agilolfing dukes.[2] The oldest church in honour of St. Emmeran, which was built by the abbot-bishop Gaubald (739–761) and was finished by his successor Sindbert (d. 791), follows the early Christian basilica in plan and architecture and was built after Italian models.[3]

At Passau, also, the Romans built a fort on the tongue of land between the Danube and the Inn. The oldest part of the *oppidum* was the highest point of this promontory, and there the cathedral stands to-day. The *Vita Severini* relates that the town was destroyed and plundered by the Thuringians after the departure of the Romans (488); yet later research agrees in the view that there can have been no complete devastation there. The Roman wall survived into and beyond the Middle Ages, and some of the provincial population were left.[4] It should be observed that here the *Vita Severini* contradicts itself. It describes how the inhabitants of Boiotrum, the extra-mural settlement on the site of the modern Innstadt, had requested Severinus to obtain for them from the Rugian king Feba permission to carry on trade.[5] Thus commercial intercourse between the Romans and Germans had by no means ceased.[6]

Salzburg, the ancient Juvavum, deserves a special and thorough examination, because it is the witness for the crown of the older " destruction " theory. In this case there are definite and apparently unambiguous accounts of how the old Roman town was destroyed and its ruins lay completely desolate and overgrown with grass and briars at the end of the eighth century. The evidence of these sources seemed to have a general application, and it has been used over and over again by early and recent scholars in support of the view that the old Roman towns on the Danube were completely laid waste and ruined. It was assumed that there was an essential contrast here with conditions in the Rhenish towns of the West, and that here at least continuity of development could be most strenuously denied.[7]

What then is the basis of this far-reaching assertion ? In order to avoid error it must first be realized that the accounts of the *Vita Severini*, in which the Heruli are said to have attacked and devastated the town of Joviacum and led its population away captive,[8] prove nothing about Salzburg, as Joviacum can in all probability be identified with Schlögen.[9] But it was considered decisive that two unimpeachable Salzburg sources of the eighth century speak of the complete

[1] *Monach. Sangall*, ii, chap. xi, MG., SS. ii, 75.

[2] MG. ss. ii, 754. Also Ebner, op. cit., 175.

[3] Cf. H. Wagner, " Studien über d. roman. Baukunst. in Regensburg," *Verhandl. d. Histor. Ver. von Ob. Pfalz und Regensburg*, lxviii, 56 (1918), and F. Schwäbl, *Die vorkaroling. Basilika S. Emmern* i. R. (1919).

[4] Cf. M. Hoffmeister, *Die städtische Entwicklung der Stadt Passau* (1910), 19.

[5] Ch. 22, §. 2, MG. AA. i, 19. " Interea beatum virum cives oppidi memorati (Boiorri) suppliciter adierunt, ut pergens ad Febam Rugorum principem mercandi licentiam postularet."

[6] Pallmann, *Geschichte der Völkerwanderung*, ii, 293 ff.

[7] S. Rietschel, *Die Civitas auf deutschem Boden*, 38, who, however, in another passage (29) says that Juvavum continued to nourish under Germanic rule. Also A. Luschin v. Ebengreuth, *Österreichische Reichsgeschichte*, 2,1, and Lehmann.

[8] Chap. 24, MG. AA, i, 20, §. 3.

[9] Cf. R. Trampler, " Joviacum, das heutige Schlögen," *Progr. der Franz-Josefs-Realschule, Wien*, xx (1905).

destruction of the town, the *Gesta Hrodberti*, which were ascribed to the time of the Salzburg Bishop Virgil (d. 784),[1] and the *Breves Notitiae* which were supposed to belong to the same period as the *Indiculus Arnonis*, i.e. about 790. The agreement of these independent records seemed to confirm the facts beyond a doubt.

Most recent research has, however, made highly significant changes in the interpretation even of these documents, and has arrived at results whose fundamental importance could only become obvious when attention was for the first time concentrated on the particular problems mentioned above. It has been shown that the passages in question in the *Breves Notitiae* are derived from the *Gesta Hrodberti*[2]; they therefore lose their value as independent records and are useless as evidence in the problem that is before us. Moreover, the *Gesta Hrodberti* itself has also lost much of its former prestige. Not only is it of a later date than was thought originally,[3] belonging to the ninth century, but its good faith is not above suspicion, and there is reason to believe that its composition was influenced by certain aims of the archbishopric of Salzburg.[4] There can be no doubt that a very clear aim was pursued in its topography. According to the *Gesta*, Rupert makes a journey to Lauriacum and its province, in order to include it in his own sphere of activity and to support the intentions of the archbishops of Salzburg in that region.[5] But the falsifier had also another object in view. We possess a genuine record of Rupert's doings, the so-called *Indiculus Arnonis* of 790. Here we find nothing about his journey to Lauriacum. Even if this did not prove a stumbling-block, the contrast between the two accounts of Rupert's undertakings is remarkable. According to the *Gesta*, directly Rupert had received his authority from Duke Theodo, he begins his activity in the province by journeying to Lauriacum. From there he goes to the Wallersee and while he is at work here, he hears for the first time that in the neighbourhood there is a place called Juvavum, where beautiful houses had been built in Roman times, but which is now in ruins and hidden by forests. This information causes Rupert to visit the place personally; and he asks the Duke to give him authority *ad extirpanda et purificanda loca ad ecclesiasticum prout ei libitum foret, ordinare officium.*

The story runs quite differently in the *Indiculus Arnonis*. The list of tributes paid to the bishopric of St. Peter within the town of Salzburg (*infra oppidum Salzburch*) begins by stating that Duke Theodo had first (*primum*) handed over to Rupert with all its belongings *predictum oppidum simulque et castrum superiorem.*[6] Thus the settlement cannot have perished completely.[7] The story of the older and reliable record is the more credible, especially as the *Gesta* later contradict their own account as given above; for they mention in a subsequent passage the *castrum superius* where Rupert is said to have founded the nunnery later on.[8] Are we to assume that it was first built by him? The *Gesta* tell us nothing of that, but allow it to appear that the nunnery was already in existence.

The falsification is still more plain if we add the story of the later *Breves Notitiae*, which obviously made use of the *Gesta*. They relate that Duke Theodo

[1] Cf. F. M. Mayer, "Beitr. zur Geschichte des Erzbistums Salzburgs," *Archiv. für Österr. Geschichte*, lxiii, 595 ff.

[2] Levison, "Die älteste Lebensbeschreibung Ruperts von Salzburg," *N. Archiv.*, xxviii, 285 ff. (1903).

[3] Op. cit.

[4] B. Krusch, "Der Heilige Florian und sein Stift," *N. Archiv.*, xxviii, 580 (1903).

[5] See German edit., i², 178.

[6] *Salzburger UB.*, i, 4.

[7] H. Widmann, *Geschichte Salzburgs*, i, 60 (1905).

[8] *Archiv. für Österr. Geschichte*, lxiii, 608.

gave Rupert authority to travel throughout the *regio Baioariorum* in order to choose a place for the bishop's see; and that after visiting many places, he stayed first of all at the Wallersee and founded a church there. Soon, however, he realized that it was *not a suitable place* for a bishop's see and therefore sought a better one. With the consent of the Duke he then went to Juvavum, and found there many ancient buildings in ruins. After clearing up the place, he founded a church as well as erecting buildings corresponding to the dignity of a bishop's see.[1] In a later chapter (IV) the *Breves Notitiae* tell how Rupert, by the advice and desire of the Duke, built a church and the nunnery *in superiore castro sepedicti Juvavensis oppidi*.[2]

The whole situation is made clear, I think, by the juxtaposition of these three sources. An *oppidum* and a *castrum superius* were already in existence when Rupert came to Salzburg. Those proofs of continuity, which have been shown to be correct in the case of Passau, also apply to the town on the Salzach.[3] Here, too, we have a site which from its very nature invites settlement. Anyone who has looked down from the Mönchsberg on to the Salzach, which, guarded by the mountain heights near by, here flows out into the widening plain, will understand that this place of primitive prehistoric settlement can hardly have been completely deserted or abandoned at any time. Even if the old Roman town really decayed and was depopulated, the conquering German would scarcely have renounced without reason the great advantages of this situation. Near at hand are the salt-deposits of Reichenhall, in much demand from the earliest times, where continuity of settlement has already been proved.[4] Round the town Roman place-names have survived in large numbers up to modern times.[5] The same early record of the end of the eighth century, the *Indiculus Arnonis*, which tells of the existence of an *oppidum* and a *castrum superius*, mentions many *Romani* with tributary *Hufen* which were transferred to the bishopric. In my opinion there is no doubt that on the site of Juvavum also there was continuity of settlement. In that case it is comprehensible that it should be chosen as the bishop's see; it was not customary to found sees in deserted ruins.

The accounts of the *Gesta Hrodberti*, when compared with those of the earlier *Indiculus Arnonis*, are obviously *falsified*. It is, however, surprising that this short record, so scanty in its contents, and able to tell so little about Rupert, should lay such emphasis on the fact that the beautiful buildings of Roman times had all (*omnia*) fallen into decay. The *Gesta* say nothing of a destruction of Lorch, whereas Juvavum, much farther to the West and therefore less exposed to invasions from the East, is said to have been completely destroyed. Indeed Lauriacum is actually called a *civitas*, not an *oppidum* (as it is described in genuine documents of the period), because its character as an episcopal town had apparently to be emphasized; and therein the second main purpose of the falsifier stands out clearly. St. Rupert was said to have begun his work from the episcopal town of Lorch, and not from Salzburg, so that he might appear to be a real diocesan bishop (was he perhaps in reality not one?),[6] and so that the claims of Lorch to the Bavarian province might be urged from Salzburg. If, however, it had to be proved that these claims were based on ancient rights and were not merely a new claim

[1] *Salzburger UB.*, 1, 18 f. [2] *Salzburger UB.*, 1, 22.
[3] See above, 81. [4] See above, 64. [5] See above, 67.
[6] Krusch, op. cit., 581, doubted this and thought it probable that Rupert was only a monastic bishop!

by the distant Salzburg bishopric, or an unjustifiable episcopal policy of eastward expansion, then such efforts could be furthered by emphasizing the complete destruction before Rupert's appearance of all settlement, especially that of Roman times. In this connection the remarkable amount of archæological information scattered among the scanty contents of the *Gesta* is no longer harmless, but becomes an expedient deliberately introduced to support an all too obvious tendencious falsification of a later period (i.e. ninth century). The archaizing purpose of the *Breves Notitiae* appears all the more clearly because in genuine contemporary documents (for example the *Indiculus Arnonis*, and the charter of Charles the Great of 790, MG. D. Kar., 168) the name Juvavum is not used at all, and the latter speaks of the *Petenensis ecclesia, que nunc appellatur Salzburch.*

With the documents now at our disposal we arrive at theories precisely the opposite of those which used to be held. In Salzburg, at the end of the eighth century, there was not only a hill-fort (*castrum superius*) with an urban settlement (*oppidum*) below it, but even in the ninth century there were obviously numerous and extensive remains of Roman times. The suggestion that St. Rupert had first to cut down overgrown briars and then clean up these places in order to found his ecclesiastical buildings is a clumsy invention of the later falsifier, who " worked up " an atmosphere of mouldering ruin, which was popularly accepted even in his day.[1] The genuine *Indiculus Arnonis*, on the contrary, speaking of the *episcopatus St. Petri*, definitely states " quod constructum est *infra* oppidum Salzburch ". Moreover, Salzburg did not arise near or outside the old Roman town of Juvavum, but inside it; and excavations and the numerous remains discovered there prove this too. Its " centre is to be sought where the oldest streets are to-day, from the Mozartplatz, the Residenzplatz, and the Kapitelplatz to the Kajetanerplatz." [2]

These conclusions also sweep away one of the main supports of the theory of destruction and devastation in the other towns of Noricum in the age of the migrations. To the east, Lauriacum is the first in the series. Most scholars used to incline to the theory that a settlement remained in this old Roman fort up to the time of Charles the Great,[3] and that the ecclesiastical organization outlasted the Germanic invasion. Recently the opposite view has been put forward, based chiefly on the controversy about the date of the cult of St. Florian in the neighbourhood. It was thought earlier that the *Passio S. Floriani* provided very ancient evidence for the introduction of Christianity and the continuance of Roman civilization in this territory; but when it was proved that it was a falsification and that both versions belong to a much later date (the eighth or ninth century), scholars began to deny any continuity of development from the Roman period onward. The *Vita Severini*,[4] the *Vita S. Emmerami Arbeos*, and the foundation charters of Krems cathedral were taken as positive evidence of the desolation which took place.[5]

The tendencious and dreary pessimism with which the *Vita Severini* describes these conditions has already been pointed out.[6] The *Vita S. Emmerami* is even less conclusive, for it contains only the statements about total devastation which are typical of such religious sources, and recur constantly in them. But the emphasis on devastation has in this particular instance a deeper and very practical cause;

[1] See German edit., i², 182, n. 415.
[2] H. Widmann, *Geschichte Salzburgs*, i, 17.
[3] Cf. Dümmler, *Geschichte des Ostfränkischen Reiches*, i², 29.
[4] Chap. 31, §. 6, MG. AA., i, 24.
[5] Strnadt, *Archival. Zeitschr.*, viii, 45. [6] Cf. above, 64 f.

it was used to evoke the fiction of the *eremus*, even when no *eremus* existed, for upon that fiction many ecclesiastical claims were founded. It must be remembered that the *eremus* constituted an important and enforceable claim, which could be successfully urged when ecclesiastical rights of property were challenged by private individuals.[1] Finally, the conclusions which have been based on the foundation charters of Krems cathedral go much too far.[2] Because it is stated that Duke Tassilo brought forty families from another district for agricultural purposes, this district is said to have been depopulated! By methods such as this it could be proved that in 985 the whole of Austria was depopulated and a desert.[3]

No one who goes into this question quietly and carefully can afford to overlook the solid basis of the earlier theory. The *Vita Severini* itself tells us that the citizens of Passau endeavoured to open trading relations with the Rugii,[4] and we learn from a capitulary of Charles the Great in 805 that Lauriacum was then still standing, and was the residence of the marcher count who watched over trade with the eastern neighbours of the Franks.[5] This trade, i.e. the intercourse between Roman provincials and Germans, certainly suffered no lasting interruption. Or are we to assume that Lauriacum, after being, as it is stated, already destroyed and abandoned at the end of the fifth century, was then built up and inhabited again in the sixth or seventh? The modest question then occurs, who carried out this reconstruction? Was it perhaps the Avars or the German "barbarians"? Charles the Great in his campaign against the former in 791,[6] found a base for his military undertakings near Lauriacum, on the Enns itself. Passages from Procopius and Paulus Diaconus prove that in the sixth century Noricum was by no means depopulated or devastated.[7] At the beginning of that century it was occupied by the Baiuvari, and indeed, a number of recent scholars assume that first of all they took possession of the Ufernoricum, "the good granary," and thence spread up the Danube and on to the higher plains, and not over the Böhmerwald and the Upper Palatinate.[8] An attempt has, moreover, been made to show that Noricum was occupied after 455 by the Bavarian Suevi "without entirely destroying Roman organizations".[9] Moreover, missionaries from the West are known to have been already successfully at work in these regions at the beginning of the seventh century, for example Abbot Eustasius of Luxeuil (d. 629).[10] It has been proved that there was a church of St. Laurence in Lauriacum at the end of the ninth century,[11] and a church of St. Michael in Salzburg at the end of the eighth[12]; taken in connection with all our other observations this is not without significance.[13] Finally, the gradual change of the name from Lauriacum through Laoriahha to Lôrahha and Lorch has likewise been used as a proof of continuity of settlement.[14]

[1] Cf. my *Wirtschaftsentwicklung der Karolingerzeit*, i, 215; 2nd edit., i, 237 f.

[2] *Urkundenbuch d. L. o. d. Enns*, ii, 3. Cf. Charlemagne's confirmation in 791 (MG. D. Car., 169) where the corresponding passage speaks not of forty families, but of a transference of land.

[3] The Charter of Otto III for Passau (MG. DO., iii, 21) shows that the bishop colonized his land in the Ostmark with freemen: "ex inopia servorum!"

[4] Cf. above, 81.

[5] MG. Capit., i, 123, chap. 7.

[6] Cf. Mühlbacher, *Regesta Imperii*, i², No. 314 c.

[7] Dümmler, *Pilgrim von Passau*, 3, notes 12, 13.

[8] Cf. M. Döberl, *Entwicklungsgeschichte Bayerns*, i², 6 (1916).

[9] Fastlinger, "Ein Zeugnis für das Tempelwesen und für die erste Landnahme der Baiersweben in Noricum," *Riezler-Festschrift*, 1913, 1 ff.

[10] A. Hauck, *Kirchengeschichte Deutschlands*, i³, 335 f.; Levison, op. cit., 286.

[11] *Mon. Boica*, 28*b*, 32, No. 36.

[12] Cf. the verses of Alcuin, MG. Poetae lat., i, 337 f.

[13] "Ältestes Kirchenwesen," *Oberbayerisches Archiv.*, 50 (1897).

[14] See German edit., i², 187, n. 442.

If, on the basis of all these arguments, I too declare myself in favour of continuity, my opinion is based not only on a critical investigation of sources in the particular case of Lorch, but on the great increase in our archæological knowledge in general which has taken place recently, especially on the Danube in the South-East. Lorch cannot be judged apart from the other towns; and just as the results of investigations in Salzburg and Vienna used to be regarded as authoritative in deciding the problem of Lorch, so they still are, though now in the opposite sense. For archæological research has, in recent times, made very important discoveries in Vienna which demand more cautious examination. The earlier view that in the sixth and seventh centuries Vienna was in ruins, like all the Roman forts from Batava castra to Sirmium, can hardly be held now in face of established facts. The three oldest churches of Vienna, St. Ruprecht, St. Peter, and Sancta Maria am Gestade, were founded on the sites of old Roman places of worship; not only Roman masonry, but remains of mosaic floors have been found there. The surprisingly ex-centric position of these churches, which stood not inside but outside the Roman camp, is explained by the fact that they are exactly in front of the old Roman camp-gates. It is obvious from the *Epitome* of Hermogenianus that gates were considered holy places by the Romans; and this explains why places of worship were erected there, in order to gain the protection of the gods for the garrison which entered or marched out through them to battle. Here, too, the old heathen places of worship were turned by the Christians into churches, and it is probable that at the end of the eighth century Archbishop Arno continued to make use of the older Christian churches, when he was reorganizing the Bavarian church.[1]

The churches of St. Ruprecht and St. Peter, which are not only ex-centric but situated at opposite ends of the Roman camp, suggest further conclusions. It is clear that these Christian places of worship were first founded to meet a special need. There were apparently within the camp two settlements in the same place; the larger of the two, being on the northern side above the bank of the Danube, was called into being by the river trade; the smaller, farther to the south, was occupied with agricultural pursuits. v. Kenner expressed the conviction that Vienna cannot have been completely destroyed by the Avars, for its walls were so strong that during the thirteenth century extension of the city they could be demolished only with the greatest difficulty. "It is therefore unlikely that in the time of the Avars there was an interruption in settlement, even though the population must have decayed and become impoverished under the stress of circumstances."[2] This is also proved by Byzantine coins of the sixth to the seventh centuries found on the site of the Roman Vindobona,[3] and by the observation that on two sides, the south-west and south-east, the earliest medieval fortifications of Vienna exactly coincide with, and correspond to, the latest Roman ones.[4] The chief proof of continuity is, however, that provided by the topography of the oldest part of the town in the Middle Ages. Even those scholars who assume the complete demolition of Vindobona[5] have to acknowledge that the precincts of the

[1] Cf. Fr. v. Kenner, "Die Dekumantore von Vindobona," *Jahrbüch für Altertumskunde, herausgegeben von der k.k. Zentralkommission*, i, 39 ff. (1907), and by the same author, "Die örtliche Lage der ältesten Kirchen von Wien," *Berichte und Mitteil. d. Altertumsver. zu Wien*, xli, 3 ff. (1908).

[2] Op. cit., 9.

[3] Cf. v. Kenner, *Monatsbl. d. Altertumsver. zu Wien*, 1911, 2.

[4] Cf. W. Böheim, "Das Befestigungs- und Kriegswesen," *Geschichte der Stadt Wien*, i, 268 f.

[5] v. Voltelini, *Die anfänge der Stadt Wien*, 14 ff. (1913).

oldest town corresponded to the Roman fort; and that the centre of old Vienna, the modern Hohe Markt, lies exactly where the old Limes way and the Via Decumana cross, and the main front of the old prætorium was. In Vienna, also, the course of the old Roman roads running towards the fort may be traced in the street-plan of to-day; they were used far into the Middle Ages [1]; and it should be especially noticed that the first extension of the town, namely the Jewish quarter, was close to the old town walls,[2] most of which stand on their ancient foundations.[3] Similar observations have been made in the Roman towns on the Rhine. Finally, my pupil, Ernst Klebel, has fortunately discovered Salzburg annals [4] which mention Vienna in 881, and by a name, "Wenia," which must go back at least to the eighth century, according to the expert opinion of R. Much. This also completely invalidates the chief argument of the older theory, that Vienna was not mentioned again until 1030.[5]

The continued existence of settlements is probable not only in Vienna, but also in the smaller Roman places of the Danube territory, Mauer on the Url, and Faviana Mautern (which both appear again as trading centres in the Raffelstädt Toll-book of about 905). Moreover, all these proofs are notably strengthened by the fact that recent excavations of the Austrian Archæological Institutes have given surprising results in the case of Binnen-Noricum.[6] Remains of early Christian churches of the fifth to the sixth centuries were found in the ancient *civitates* Aguntum (near Lienz), Teurnia (St. Peter in Holz, Upper Carinthia), Juenna (near Globasnitz, Lower Carinthia), at Meclaria in the Kanaltal (on the Pontebba road), and at Virunum (on the Zollfeld). Here, complete Christianization must have been achieved in the course of the fourth century. In the fifth and sixth centuries we see the Church in Binnen-Noricum completely organized; and in all these places there are bishops who are under the authority of the patriarch of Aquileia. At the beginning of the sixth century the Frankish bishops kept trying to extend their territories, as we learn from complaints of Aquileia to the Emperor Justinian.

Thus here also after the death of Severinus (d. 482) and the departure of the Romans mentioned in his *Vita*, there was much opportunity for a mutual exchange of culture between Romans and Germans, who constantly used this district as a thoroughfare to Italy. It is certainly significant that such finds should have been made in the Kanaltal on the Pontebba road. These archæological facts give an important background to our previous knowledge from historical sources,[7] especially the well-known and proud letter of the Frankish King Theodebert to the Emperor Justinian, in which he boasts of having extended his rule up to the Adriatic and over Pannonia.[8] R. Egger is right in assuming that these churches did not perish until the end of the sixth century.[9] They may have been destroyed by the advance of the Slovenes and the invasion of the Avars; but Aguntum at least cannot have perished before 610.[10] This destruction, it should be observed, must have taken place at a time when the Bavarians had already extended their rule

[1] Ibid., 16. [2] Ibid., 20 f. [3] Ibid., 14 ff.

[4] *Mitteil. d. Ges. f. Salzburger Landeskunde 1921* (vol. lxi) SA. 5.

[5] See German edit., i², 190.

[6] Cf. R. Egger, "Frühchristliche Kirchenbauten in südlichen Noricum." *Sonderschriften des Österr. archäolog. Instit.*, ix (1916).

[7] Cf. J. Friedrich, "Die ecclesia Augustana in dem Schreiben der istrisch. Bischöfe an Kaiser Mauritius vom Jahre 591." *Sitz-Ber. der bayerischen Akademie*, 1906, 327 ff.

[8] MG. Epp. 3, 133 (534–547), No. 20.

[9] Op. cit., 137.

[10] Cf. A. Unterforcher, *Aguontum. Progr. des Gymnas. Triest*, 1901; also Friedrich, op. cit., 351 f.

to the Pustertal, and had met the Slovenes there. The fact that they had already occupied Upper Noricum at the end of the sixth century can hardly be doubted in the light of present investigations. They were then still partly Aryans; for only on this assumption is it comprehensible "that King Theodebert should look on the extension of his rule to Bavaria as a gain for Catholic Christianity".[1] Perhaps the downfall of the churches is connected with this. It is now quite obvious that no interruption of culture, nor even a breach in the continuity of population, took place, and the situation is accurately summed up by R. Egger; "the historical continuity of the civilization which came from the south comes to an end; civilization and Christianity enter the land again, but this time from the north."[2]

Let us look back. The latest archæological research has unrolled before us a new picture of the connection between Roman and German life and settlement. Its results make it impossible any longer to hold the opinion that the much quoted "storms" or "onslaughts" of the so-called age of the migrations completely destroyed the Roman settlements, and caused widespread desolation in town and country. We have seen that, although there may have been much pillage and destruction, yet the old settlements were not permanently deserted, the towns were soon restored and the damage, to some extent at any rate, made good. In many, indeed one may confidently say that in the most important centres of the older civilization, settlement clearly continued throughout the period of the wars between the Germans and Romans. Even in the oft-quoted statements of Ammianus Marcellinus about the dislike of the Alemanni for town-walls, we must not look merely at the negative side.[3] He asserts positively in his introduction that the Alemanni had settled in the district belonging to the towns, i.e. in their immediate neighbourhood. Thus it was easily possible for the Germans to come into close contact with the Romans and to acquire their culture. Just as the provincials themselves, long before the collapse of Roman rule, had settled on Roman territory and had entered Roman service as *coloni*, or soldiers, and had then been employed in administration including even the execution of menial household tasks,[4] so now, after the conquest of the Roman border provinces, they remained everywhere in considerable numbers. The fact that those who remained must have been the poorer part of the population, without means of their own, had important consequences so far as the transference of culture was concerned; for they were the people who had tilled their own land in the countryside, or had cultivated little holdings as tenants of the great landed proprietors, and therefore knew Roman agricultural methods well from their own experience. They could therefore hand them on, just as the small tradesman, merchant, or artisan in the town could hand on the technique of manual labour in its various branches.

The peaceful penetration of Germans into the Roman state, which had already made so much progress during the Empire, found its counterpart in the new German forms of government which arose on Roman soil after the collapse of the Roman power. A considerable number of the provincial population, although in a dependent position, became the teachers and instructors of their new masters in the cultural, and above all in the economic, sphere. For Germans and provincials soon began a peaceful common existence in which they worked beside and with

[1] Hauck, *Kirchengeschichte Deutschlands*, i³, 335; cf. also Fastlinger, *Wintpoxing, Riezler-Festschrift* (1913), 5.
[2] Op. cit., 138. [3] xvi, 2, 12. [4] Cf. above, 53 ff.

but never against each other. The earlier view that there had been an actual war of extermination between the two peoples, a fight to the death which ended at last in the ruin of Roman civilization, arose, if we examine it more closely, from two causes. The first is to be found in the peculiar nature of historical research, which for long concerned itself chiefly with the external destinies of states and with military events, paying less attention to the internal development of civilization, and least of all to economic life. The natural result of the exaggerated importance thus attached to the political attributes of the state was that the same fate was ascribed to its material culture, i.e. destruction and ruin, a complete change of the old order. But economic life, and indeed the whole evolution of culture, often follow paths quite different from those of political development. Above all, those responsible for the latter are not always the guides of the former, and the politically subject part of the population is, in fact, often culturally the richer and more productive. Let us make no mistake. When the political struggle had been decided other conditions soon appeared.[1] The return to peaceful occupations brought with it also to a great extent an economic adjustment and reconciliation. There was no further economic strife. The Germans valued Roman culture and tried to acquire it. They were political opponents of Rome but not enemies of her civilization.

Further, the title *barbari*, given in general to the Germans, has confirmed the mistakes of the earlier theory. The wrong meaning of this word was first naturalized by the Italian Humanists, and by their disciples, the French cultural historians. We know to-day that the Romans did not use barbarian in the modern sense of enemies or destroyers of civilization. "It is first of all an expression for what is strange in speech and national characteristics"[2]; and then the idea of paganism, of hostility to Christianity becomes connected with it. As early as 1872, Gaston Paris, a linguistic scholar of great repute in more than one direction, had already proved by examples from numerous sources,[3] that the words qualifying *barbari* in the sources, such as *feroces*, *impii*, *avari*, showed clearly the meaning of the word itself. It meant nothing more or less than "devoid of Roman culture" or "devoid of Christianity"; the barbarians were thus strangers to Roman civilization, not its assailants or destroyers. Gregory of Tours uses the term *barbari* of the Franks and others, even in passages where no evil meaning can possibly be attached to it, as when monks seek their protection and ask for their goodwill.[4] At that time it can have had no disgraceful connotation. Moreover, it has already been remarked that the Germans speak of themselves as *barbari* in the accounts of contemporary writers.[5] A very significant passage from Procopius may be added to the examples given from Gregory of Tours. According to his account, ambassadors of the Lombards, appearing before Justinian in 548, make the following remark: "We have spoken plainly and simply as barbarians, for we do not understand how to make many words and can hardly express ourselves as the importance of the occasion demands."[6] In Agathias also we find a noteworthy sentence. Speaking of the brother of Teja, Aligern, governor of Cumä, he says, before the surrender of the town to the Romans: "He finally

[1] Orosius, *Hist.*, vii, 47, 7.

[2] Waitz, *Deutsche, VG.*, i², 71, cf. 126.

[3] *Romania*, i, 3, note 2.

[4] iv, 48, MG. SS. rer. Merov., i, 183: "Nolite, o barbari, nolite huc transire, beati enim Martini istud est monasterium."

[5] Bonnet, *Le Latin de Gregoire de Tours*, 1890, 3, note. Also in the folk-laws, cf. recently E. Norden, *Die germanische Urgeschichte*, 427, note 1.

[6] *De bello Gotico*, iii, chap. 34.

considered it best to hand over the town and the treasure to Narses, to adopt Roman manners and customs, and thus to escape the dangers and the life of a barbarian." [1] In both cases, therefore, what is indicated is a contrast to Roman ways, a difference in mode of life, with less education and culture, and harder and ruder customs.

In this connection it should be observed that the same expression, "barbarian," has been used of other peoples and at other times, both earlier and later, in order to express similar differences of culture and education, and especially of religion. In old Indian literature wheat was called "barbarian food" because it was little eaten there compared with rice, but was known as the usual bread-stuff of the non-Indians in the West and North-West.[2] Again, poems written in Salzburg in the middle of the ninth century, celebrating the work of the first archbishops in the mission to the Alpine Slavs, describe the latter as "barbari". [3] In both passages the difference may be felt between the rough peasant population and the superior townspeople. At the end of the tenth century, in a charter of the Emperor Otto III, the estates of Passau in the Ostmark, laid waste by the Magyars, are described as being on the barbarian boundary.[4]

Finally, the word also indicates a contrast in nationality. Several sources belonging to the so-called age of the migrations use the phrase *natione barbarus*. To the sixth century examples quoted by Fustel de Coulanges [5] and Waitz,[6] may be added one from the *Vita Severini*, in which, describing the parentage and extraction of a monk, he is called *barbarus genere*.[7] In the same period *barbarus* also took on the meaning of "soldier", or "mercenary",[8] which probably arose from the employment of numerous Germans and other foreigners in this capacity.

From the preceding descriptions of the entry of the Germans into the Roman world, it is easy to understand why the latter felt the contrast so strongly and expressed it thus. Let us remember that the Romans simply saw the Germans as captives of war, as *coloni* (i.e. peasants), then as soldiers, and finally and increasingly, as house-servants; and all these were occupations which were certain to give the cultured and well-to-do Romans in the towns the impression of a lower social grade among these foreigners. Moreover, they were heathens or Aryans, a fact which must not be under-estimated in an age of sharp religious contrasts.

Finally, who makes use of this term and in what sources do we find it? Chiefly in clerical writers of Roman Catholic tendencies, who naturally felt themselves to be separated by a great gulf from the heathen. Note, for example, how harshly Eugippius, the author of the *Vita Severini*, speaks of the Rugii and other Germans; and how well, on the other hand, of Odoacer! How much more acutely must men like Apollinaris Sidonius, Salvianus of Marseilles, or Gregory of Tours and Procopius, have felt this contrast—men of high literary culture and refined taste, belonging to old Roman noble families, and bishops to boot; men, too, who for these reasons were owners of large estates and must, therefore, have had daily acquaintance with the poor German *coloni* as tenants on their lands.

[1] *Histor.*, i, 20.
[2] Lassen, *Indische Altertumskunde*[2], 291 f., note 4.
[3] MG. Poetae lat. 2, 642, v. 21.
[4] Barbarorum limiti adiacentes Mon. Boica, 28[a], No. 162 (985).
[5] Op. cit., i, 399, note 2; 400, note 2.
[6] VG., i[3], 71, note 1; 109, note; 228, note 2.
[7] MG. AA. i, 24 (chap. 35).
[8] Cf. H. Brunner, *Deutsche Rechtsgeschichte*, i[2], 58 (1906).

There is no reason to assume from the expression *barbari* that the Germans lacked culture. Such a view is definitely contradicted by the well-known description of the decay of Roman conditions given by Salvianus of Marseilles, who continually compares them with those of the German *barbari*. He describes the latter not only as purer and more chaste in their mode of life, but as more just to their dependents and tenants and even to the Romans who live among them, and asserts that the latter actually fled to their enemies, in order to escape the injustice of their own authorities. The sharp antithesis which he draws in this connection is significant: "Let men seek Roman humanity among the barbarians, for the barbarous inhumanity among the Romans can no longer be borne." He says that all the bad qualities ascribed to the barbarians, such as injustice, avarice, faithlessness, shamelessness, are found just as much or even more among the Romans [1]; and therefore it is wrong to look down on the barbarians,[2] for their circumstances and conditions of life are much better than those of Rome.[3] That this is not merely an exaggeration on Salvianus' part is clear if we compare his words with those of his contemporary, Bishop Orosius, who says much the same, although previously in the same passage he has a great deal to say about the destruction caused by the barbarians, and regards the doings of the Aryan Goths in general with horror.[4] Even a man like Apollinaris Sidonius, who thought that the spiritual power of mankind would perish with the ruins of the Roman Empire, speaks of the Goths in Gaul as *clementiores barbaros*, and emphasizes the fact that Euric's elder brother, King Theodoric II, was very friendly to the Romans. In the sixth century Agathias said of the Franks that they seemed to him uncommonly polished and able, for a barbarian people. "The only ways in which they differ from us," he says, "are in their barbarian clothes and their peculiar speech." [5]

The agreement of our authors about the relations between Germans and Romans does not hold good only of the Visigoths in Southern France and Spain. It was not only there that the Germans were just and generous to the conquered Romans,[6] so that a mutual friendliness soon came about, and the freedom of the Romans was best preserved among the barbarians [7]; the same story is told also of Italy. In 537 when the Ostrogoths were besieging Rome, they sent ambassadors who boasted before Belisarius that since the conquest of Italy they had strictly conserved Roman arrangements; that not only had they guarded and fostered Roman laws and state institutions as carefully as any Emperor had done, but that the religious interests of the Romans had been observed with the greatest care, so that no one had had to change his faith; and that the Romans had kept all public offices, none having ever been held by a Goth.[8] Here the maintenance of the *status quo* is actually stated to be the political programme of the conquering Germans. The sixth century Byzantine author, Agathias, admires the Franks, not only on account of their other excellences but also for that love of justice and concord, which strikes him particularly as characteristic of them.[9]

A similar state of affairs may also be observed in the East, which was supposed

[1] *De gubernat. Dei*, iv, 14, MG. AA., i, 49.
[2] Op. cit., Book v, chap. 5, §. 21. MG. AA., i, 59.
[3] Ibid., iii, §. 2.
[4] *Histor.*, vii, 47, 7; Corp. SS. Eccl. Lat., v, 554.
[5] *Histor.*, i, 2.
[6] Cf. Salvianus, op. cit., v, 36.
[7] Orosius, *Hist.* vii, 47, 7.
[8] Procopius, *De bello Gotico*, ii, 6, 17 ff.
[9] *Histories*, i, 2.

to have suffered so severely from the "Germanic storm". The *Vita Severini*, which has been used only to prove the destruction and ruin of Roman culture, relates that the citizens of Passau (Boiotrum) asked Severinus, in spite of his disapproving attitude, to obtain King Feba's permission for them to trade with the Rugii.[1] Moreover, the same source expressly states that the Romans who had to leave Lauriacum were divided peacefully among the towns and lived in amicable intercourse with the Rugii.[2]

These definite statements by Roman authors of the fifth and sixth centuries support one another, because although they are quite independent statements, they agree. But, it may be asked, from another point of view are they not self-contradictory, since elsewhere they depict in such detail the great destruction caused by the barbarians? This inner contradiction is certainly there, and has been already noticed by students of the period.[3] But it is surely explicable if we realize the peculiar psychological effect upon the Romans of the political developments of the time. We cannot expect an objective description of actual events from them. Must not these enthusiastic adherents of Roman power naturally have been prone to exaggerate the unavoidable consequences of a war which overcame that power, and finally caused its collapse? Their despair about its future caused their descriptions to become more pessimistic,[4] as before their eyes the world turned more and more to the new rule of foreign "barbarians", and the latter not only gained political success, but found support among the Roman population. The attitude of a man like Apollinaris Sidonius may be taken as typical. The greater the dislike of cultured Romans for this change, the sharper would be the contrast with the "barbarians", and the blacker the description of the fate of conquered Rome.

It was not until quite recently that objective evidence, hitherto lacking, appeared on behalf of the Germans, against whom these authors took up such a hostile, and, in many ways, such a prejudiced position. This objective evidence has been furnished by the great achievements of archæological research. The remains of Roman civilization which have been excavated, and the proofs of early Germanic settlement which have been found on the most important Roman sites, are unmistakable evidence against the catastrophic theory, and reliable testimony to a friendly attitude towards culture on the part of the Germans who entered the declining Roman world. The so-called age of the migrations involved no great interruption of civilization, no complete demolition and devastation of late Roman life, the pulse of which continued to beat. But what of the period immediately following? In the new German states on Roman soil were there perhaps such destructive processes? This is our second main question: Were these German barbarians capable of taking over the inheritance of culture from the Romans, of keeping it alive, and even of developing it independently? The investigation which follows attempts to answer this question.

[1] Cf. above, 81.
[2] *Vita Severini*, chap. 31; MG. AA; i, 24.
[3] Cf. Pallmann, *Geschichte der Völkerwanderung*, ii, 393 ff.
[4] Apollinaris Sidonius actually describes his time as a world decaying through old age. Epp. viii, 3, MG. AA., 8, 130, No. 6.

Chapter IV

THE OCCUPATION OF THE LAND BY THE GERMANS IN THE FIFTH AND SIXTH CENTURIES

THE events of 476 and especially the so-called "fall" of the western Roman Empire were the natural consequence of its penetration by the Germans, as described in the preceding chapter. In Italy, too, for centuries past, barbarians had been settled again and again, for example the Marcomanni by Marcus Aurelius, the Alemanni, and Taifali during the years 370–7, and many others. In the middle of the fifth century a *Fiscus barbaricus* is mentioned, a fund from which the foreign soldiers were given their pay and maintenance allowances.[1] The mercenaries now demanded definite grants of land, as they had often done in other places, and, following a much practised custom, chose as king their leader, the Scirian Odoacer, who was serving in the Emperor's bodyguard. A third of the Roman soil, corresponding to the Roman billeting-system, was given by him to his people in perpetuity.[2]

We do not know many details of these divisions of the land. They certainly affected only a comparatively small part of Italy, for Odoacer's troops cannot have been very numerous. He allowed Romulus Augustulus, the last Roman Emperor, to live, and there was also a second Emperor, Julius Nepos, in Dalmatia. Similarly, Roman systems continued to exist little disturbed by this change in the external constitution of the state. No violent upheaval is even mentioned in contemporary sources. Odoacer would appear on the whole to have been generous and mild to the Romans,[3] for a Roman writer who otherwise shows a strong dislike for the German barbarians [4] (Eugippius, author of the *Vita Serverini*) mentions him in very friendly terms.[5] Moreover, Odoacer's attitude to the Romans in Noricum (488) shows the same mildness, for he caused them to be brought into safety across the Alps, when this province could no longer be held.

Let us now therefore consider the procedure of dividing up land. The single lots which were handed over by the Roman *possessores* to the guests (*hospites*), were certainly not of equal size. Tacitus himself has indicated that the division of land among the Germans took place in general according to rank (*secundum dignationem*). The Roman billeting-system, however, took the military rank of the *hospes* into consideration as well, a higher rank carrying with it a claim to a greater share of land.[6]

The Ostrogoths settled on Roman soil more densely than Odoacer's followers

[1] Cf. Th. Mommsen, "Ostgot. Studien," *N. Archiv.*, xiv, 501 (1889).

[2] Cf. Cipolla, "Della supposta fusione degli Italiani coi Germani nei primi secoli del Medioevo," *Rendiconti della R. Accad. dei Lincei* Ser. v, 9, 358 ff. (1900); esp. Juris, *Über das Reich des Odowakar* (1883).

[3] Gabotto, *Storia della Italia occident*, i, 313 f.

[4] Cf. Büdinger, *Sitz-Ber. der Wiener Akademie*, xci, 796.

[5] Perhaps Severinus's prophecy to Odoacer may be taken in this sense: "Vade, inquit, ad Italiam, vade vilissimis nunc pellibus coopertus, sed *multis cito plurima largiturus*" (MG. AA., i, 11). Is this a *vaticinium ex eventu*?

[6] Cf. G. Pallmann, op. cit., ii, 324.

had done, when they conquered Italy under Theodoric in 491.[1] At first they kept to the lands (*sortes Herulorum*) given by Odoacer to his troops, which naturally passed to them when they had conquered the latter. But Theodoric's bands of Goths were certainly much more numerous than those of his opponent, and there had therefore to be a fresh division of land. We learn that Theodoric entrusted this task to a noble Roman, Liberius, who had already made himself useful to Odoacer. The individual allotment was carried out in writing (*pittacia*) by subordinates (*delegatores*), in such a way that on the whole Roman conditions of property holding were to a large extent respected. It is probable that there was sometimes no actual division but that the demanded third was given in ground rent (*tertiae*). Often the Goths dwelt scattered here and there among the Romans, and, holding property in common with them (*praediorum communio*), thus became their property associates and partners (*consortes*). On the whole, the Ostrogoth occupation of Italy caused no considerable change in economic conditions. Theoderic was very moderate in his treatment of the Italian population.[2] Roman land-owners remained independent and free. He himself, according to Procopius, declared that he wished to maintain Roman arrangements; and Cassiodorus also speaks incidentally of the common rights of Goths and Romans (Var. VIII, 3). The introduction of the Germans into the old Roman framework did not, however, take place to the same extent throughout the whole of Italy; the Gothic settlements were thickest in Upper Italy and in the east (Samnium, Picenum), and less numerous in the west (in the Campania, the country round Rome and Tuscany), while there were very few in the south and in Sicily. This colonization did not take place in compact masses in particular districts, but was loosely distributed, like a wide-meshed net; it may, however, be assumed that the family tie was an important basis of settlement, and there is direct evidence of this in the case of the Rugii who had joined the Goths. On the other hand, the importance of the family in this matter must not be exaggerated; there was certainly no equal division of land within it, and individual treatment was secured by the nature of the Roman billeting system. Moreover, there is no trace of larger groupings, such as hundreds. The decrease in Italy's population caused by the preceding wars, and the partial devastation of the plains, may have made the new partition somewhat easier. The king himself appropriated the Imperial *patrimonium* and also confiscated rich lands, which he presented to his military *comitatus*. The cultivation of waste land was encouraged and a considerable part of the great landed estates (not only those of the king) was let out for rent.[3] It is significant that Gothic names are found among the *coloni*. Great differences in landed property are noticeable; beside the military nobles there are the great landowners (*potentes*), while the freemen are occasionally distinguished as *honestiores* and *humiliores* (or *viliores*). The disadvantage of the late Roman agrarian system seems to have had the same social effects as before; for Theodoric in his Edict,[4] and later Totila, were obliged to protect the peasant classes against the oppression of the great landowners.[5] But under Byzantine rule (553–568) an economic readjustment in favour of the latter took place. The so-called "pragmatic sanction" of Justinian (554) cancelled Totila's grants of land and restored to the Romans their

[1] See German edit., i[3], 205.
[2] Cf. Sundwall, *Abhandlungen zur Geschichte den ausgehenden Römertums* (1919), 196, note 1.
[3] Dahn, *Könige*, iii, 138.
[4] Ibid., iii, 41 ff.
[5] Procopius, iii, 6, 13, also Sundwall, op. cit., 303.

property as it had existed before Totila.[1] Thus the old Roman conditions, especially in the matter of the organization of land-ownership, found a new and important support.

The conquest of Italy by the Lombards (568) created broader foundations for this new development. We do not indeed know very much about it, for the existing Lombard laws are considerably later, which is perhaps the reason why they tell us nothing of the procedure during the first division of the land. Otherwise this lack of information would seem curious in the light of recent investigations which have proved that the older Visigothic laws were used in framing the Edict of Rothari (643).[2] The Roman "quartering" principle upon which this edict was based is not mentioned here. It is not clear whether the division of land among the Lombards differed from that of the Visigoths and Burgundians; was it perhaps less favourable to the previous owners? Roman sources speak of the massacres, pillage, and oppression which the Lombards spread everywhere, and it is certain that in the first part of the conquest many Romans were taken captive and had their property confiscated, whilst many were killed or fled. The rich royal lands passed to the King of the Lombards, and, after Cleph's assassination (574), to the thirty-five army chiefs (*duces*). Nevertheless, during the kingless period of the *duces* (574–584) there was nothing like a general expropriation of Romans, or their universal reduction to the semi-free condition of *aldii*.[3] They must, to a considerable extent, have kept their personal freedom and their property, even though it might be burdened with taxes and duties such as the *tertia*, which meant a third of the produce (*tributarii*).[4] It is a significant fact that many Romans, freemen as well as serfs, fled to the Lombards to escape from the oppression of Roman landowners, because they found their freedom guaranteed there.[5]

The devastations of the conquest and the years of war certainly must have resulted in much uninhabited and waste land, which gave the army-leaders an opportunity to present their military retinues (*gasindi*) with gifts of land. Those among the Lombards, however, who were completely free were not everywhere "landlords", enjoying an unearned income derived from the labour of their tenants because they did not want to till the land themselves.[6] On the contrary, there is far more evidence to show that not a few of the smaller landowners farmed part of their property (*sala*, *sundrio*) themselves, and that on the larger estates also independent cultivators existed side by side with those holding rented land.[7] It is probable that already at the time of the occupation the considerable variations in the size of properties corresponded with variations in social position. Besides the poor there were the better-off, *hi qui maiore virtute habentur*.[8] In the settlements ties of blood (*farae*) may here and there have played a part, which may account for place-names compounded with "Fara", but in the later household-communities of brothers and collateral relations they can hardly have done so.[9] Schupfer has already assumed that the network of blood-relationships had been

[1] Gaupp, *Die germanischen Ansiedlungen in d. Provinz der weströmischen Reiches*, 493 ff.
[2] Zeumer, "Geschichte der westgot. Gesetzgebung," *N. Archiv.*, xxiii, 428 f.
[3] See German edit., 1^2, 208, n. 24.
[4] Schupfer, *Delle Istituzioni Langob* 372.
[5] Schupfer, *Istituzioni*, 86.
[6] See German edit., 1^2, 209.
[7] Cf. Schupfer, "Degli ordini sociali e del possesso fondiario appo i Longobardi," *Sitz.-Ber. der Wiener Akademie*, xxxv, 455 ff. (1861).
[8] F. Dahn, *Könige*, xii, 41, notes 1, 2.
[9] Cf. L. M. Hartmann, "Bemerkungen über Besitzgemeinschaft und Wirtschaftsgemeinschaft in italienischen Privaturkunden," *Zeitschr. f. Soz. und WG.*, v, 201 ff.

largely broken by mixtures of race, by the long wars, and by Romanizing influences,[1] and it was pointed out some time ago that the settlement was based throughout on clearly defined private ownership and that there is nowhere any evidence of remains of communal ownership. Wherever communal farming occurs, as it does in the household-communities, it was obviously for economic reasons, since it was easier for a large number of hands to farm the land undivided. It must be added that among the Lombards an artificial brotherhood (*adfratatio*) of unrelated persons took place for definite economic purposes, in order to lighten the burdens of dues and labour services, and to secure themselves, by extending their hereditary rights, against the reversion of the land to the siegneurial land-owners.[2] Even in the household-communities the members had a right at any time to share out in equal parts. The waste-lands (forest, pasture, water), the "Fiuvaida", remained undivided for common use, and the extent of this use was proportionate to the size of each individual holding.[3] Thus the use of the waste was not based on a principle of communal property-holding.

With the rise of Authari to power in 584 the monarchy was restored,[4] and the Dukes now handed over half of their property to it. At the same time a definite agreement or "restoration" was made with the Romans so that the new king, who adopted the significant title of Flavius, arranged a division of land between them and the Lombard *hospites*. Of the nature of this division we know no details. After the peaceful period under Authari, Romanization made great progress.[5] This would hardly have been possible if all the Romans had been expropriated long before and had sunk to the condition of semi-free *aldii*.[6] Probably the Roman population was superior to its Lombard conquerors not only in culture, but in numbers.[7] It was most significant where mobility of property was concerned that Rothari (643) recognized the legality of wills and permitted last dispositions for the purpose of spiritual salvation.[8] It is especially observable that a free man without a son could give his property elsewhere,[9] without any limitation owing to the prior claims of relations or neighbours. In the laws of King Liutprand (713–735) a certain equality of Roman and Lombard rights is to be seen in the business intercourse of everyday life. Marriage is allowed between Romans and Lombard women, a fact which must have brought about an increasing mixture of race.

Numerous documentary sources show the continuance of late Roman economic systems in the organization of seigneurial land-ownership, especially in the different types of land tenure.[10] Here also scholars have recently proved that in the first period of settlement the Germans nowhere lived permanently in large consolidated groups.[11] It has been proved that in Tuscany the ancient

[1] *Istituzioni Langob.*, 375.

[2] Tamassia, *L'affratellamento* (1886), and H. Brunner, *D. Registrum Farfense*, *Mitteil. d. Inst.*, ii, 13; also E. Hinojosa, *La fraternidad artificial en España Revista de Archivos, Bibl. y Museos*, ii, 1 ff. (1905).

[3] Cf. Schupfer, *Sitz-Ber. der Wiener Akademie*, xxxv, 437, note 5.

[4] Cf. F. Schneider, *Die Reichsverwaltung in Toskana*, 159 ff., and the bibliography given by him.

[5] Ibid., 165, and 170.

[6] Schupfer, *Istituzioni Langob.* 85.

[7] See German edit., 1², 210, note 43.

[8] Dahn, *Könige*, xii, 232 ff.

[9] Edict Rotharis, § 171, MG. LL., 4, 39 f.

[10] Cf. Schupfer in *Sitz-Ber. d. Wiener Akademie*, vol. xxxv, and L. M. Hartmann, *Bemerkungen über Besitzgemeinschaft und Wirtschaftsgemeinschaft in italienischen Privaturkunden*, op. cit., 206 ff., and N. Tamassia in *Archiv. giurid*, lxi, 129 (1898).

[11] F. Schneider, op. cit., i, 165.

place-names have survived more or less over the whole country and up into the mountains, and that the ecclesiastical patron-saints of pre-Lombard times were scattered to the same extent, but that the specifically Lombard saints do not seem to have been confined to any particular region, being often found in places which already existed in earlier times, not infrequently close to the places of worship of the subject Romans.[1] In Lombardy and Piedmont there are numerous traces of Lombard influence, both in place-names and in art.[2] The same is true of Friuli, Venetia, and the districts of Spoleto and the Abruzzi.[3]

Not only in Italy but in Spain and the south of France (Aquitania), too, the German conquerors found Roman ways settled and firmly rooted. The settlement of the Visigoths in southern Gaul[4] took place at the beginning of the fifth century under King Wallia (c. 418). About the middle of this century the conquest of Spain was begun by Theodoric II (453–466) and completed for the most part by Euric (466–485). The numerous laws of the Visigothic kings, of which fragments remain even from Euric's time, allow us to trace fairly clearly the gradual development of the conditions of settlement, now that later criticism has determined the various redactions of these laws.[5] According to the earliest Gothic legal document, the law-book of King Euric (*c.* 475), the old estates (*fundi*) seem to have been divided among Goths and Romans, the former receiving two-thirds (*sortes Goticae*) and the Romans one-third (*tertiae Romanorum*). The Visigoths also appear as *hospites*; and they, too, were on the whole moderate and generous in their attitude to Roman conditions of ownership.[6] Indeed there are proofs that under King Athaulf some estates near Bordeaux were at first left quite free from Gothic *hospites*.[7] It is noteworthy that according to Euric's decrees the old estate-boundaries (*termini*) of the Roman *fundi* were to be taken as a guide. If the property were undefined by definite marks or boundaries, there was to be an investigation, to which both parties could send their chosen representatives.[8] It should be noticed that in the text of Euric's law the technical expressions employed are those in use by Roman surveyors (*inspectio*, *limites*).[9] No one was to fix boundaries afresh without the knowledge of his partner (*consortis*), or of the officials in charge (*inspectore*). Any infringement of this law was punished and thus the Romans were protected against capricious encroachments.[10] Moreover, the expressions *divisio* and *consortes* do not always refer to partitions between Romans and Goths, but often to those among the Goths themselves.[11] Futhermore, the Visigoths were not landlords in the sense that they lived on rents from the subject Romans; Dahn has already proved this from sources (Merobaudes, etc.) which show that the Goths themselves took part in agriculture.[12] In this respect, too, they appeared side by side with and in the midst of the Romans, and were not separate from them or detached from their economic

[1] F. Schneider, op. cit., i, 174 f.
[2] Cipolla, op. cit., 557 f.
[3] See the proofs given by Al. Wolff in Hartmann, *Geschichte Italiens*, ii, 1, 52 f.
[4] Cf. Gaupp, op. cit., 372 ff.
[5] Cf. Zeumer, "Geschichte der westgotischen Gesetzgebung," *N. Archiv.*, vol. 23, 24, 26, and R. de Ureña y Smenjaud, *La legislación goticohispana*, 1905, also *Ausgabe Zeumers* in MG. LL. sect. i, 1 (1902).
[6] See the examples given by Dahn, op. cit., 54.
[7] Dahn, op. cit., 53, note 5.
[8] MG. LL. i, 1, 4, c. 276.
[9] Cf. Rudorff, *Die römischen Feldmesser*, i, 281, and ii, 234 ff.
[10] Euric, op. cit., 276. "Quod si forsitan liber hoc fecerit, damnum pervasoris excipiat, quod legibus continetur." Cf. Germ. edit., i², 13.
[11] Gaupp, op. cit., 395; Dahn, op. cit., 55, note 3. Cf. Germ. edit., i², 14.
[12] Dahn, op. cit., 53, 55.

activities. It is perfectly clear everywhere that the individual owns property in land and has extensive rights of disposal over it, without limitation by clan or family.

For a long time after the division of the arable land, there were undivided forest-land and unfenced pastures in common possession and in common use by Goths and Romans.[1] If a partner is going to make a clearing, says another passage in the Visigothic Law, his *consortes* must be compensated by the grant of a corresponding piece of forest in another place; or if this is impossible, he is to have part of the clearing.[2] Because there is mention here of a particular kind of division, it is not to be concluded that the original division had not been completed. The matter is easily explained if we proceed from Roman conditions as our basis, i.e. if we put ourselves in the position of the Visigoths when they were settling there. Besides his individual property in arable land, the Roman owner also had the use of the *compascua*, the undivided forest and pasture.[3] It was only natural that the Goth became entitled to this right with his share, too, and that the uncultivated land (mountain, forest, and pasture) continued to remain undivided for technical economic reasons. That particular law is intended to prevent either of the *consortes* from doing anything to the disadvantage of the other,[4] which must have happened if one of then, by making a clearing, took individual property from the hitherto common and undivided forest. This is also a proof, hitherto unnoticed, that the Visigoths themselves took part in the work of agriculture, for no difference as regards nationality is made between the two *consortes*.[5]

The *sortes* of the Goths can hardly have been equal everywhere. For one thing the king could add to them by presents from the rich lands of the Fisc.[6] For another there was extensive freedom in the disposal of property such as alienation by written agreement; the payment of purchase price before witnesses [7] was just as frequent as gifts from husband to wife, exchange before witnesses [8] or disposition at death, and these were bound sooner or later to lead to marked changes in tenure and widely scattered properties. Moreover, "Wartrecht" of heirs was abolished by King Euric. Originally, marriages between Goths and Romans were forbidden; but from the middle of the sixth century the fusion of the two races made great strides when this ban was lifted by King Leovigild (568–586), and daughters were given equal rights of inheritance with sons. Under Leovigild's successor, Reccared I (586–601), the religious differences also disappeared, because he gave up Aryanism, and Catholicism became the state religion. With the increasing influence of the church new causes of disruption appeared in the old conditions of land tenure.

As the Roman quartering-system was the basis of the Gothic settlements, the latter cannot, from the beginning, have been in compact areas. Moreover, Salvian of Marseilles for Southern France and Orosius for Spain are definite witnesses to the fact that many Romans lived among the Goths, and even went to them in order to escape the oppression of Roman landowners.[9] Thus, even if here and there the

[1] *Lex Visigot*, viii, 5, 5; x, 1, 9.
[2] *Lex Visigot*, x, 1, 9: "De silvis inter Gotum et Romanum indivisis relictis."
[3] See below, chap. v.
[4] Cf. Gaupp, op. cit., 399.
[5] See the similar device in *Lex Burgundionum*, 220, note 111.
[6] *Lex Visigot*, op. cit., ii, 1, 6; Gaupp, op. cit., 396.
[7] *Lex Visigot*, ii, 1, 6.
[8] Euric., Frg. cclxiii, op. cit., 13, 15.
[9] Cf. above, 91 f.

Goths had more enclosed zones of settlement,[1] these must gradually have been penetrated by Romans, who would be able, as smaller owners or free labourers, to pass on Roman customs and agriculture. Practical examples of this, drawn from everyday life, are given by the Visigothic Formularies, which are not found, however, until the beginning of the seventh century.[2] As for the different types of settlement established by the Visigoths, it seems that the isolated homestead and the village settlement are commonly found side by side; evidence of this is found in many passages in the Visigothic Law.[3]

To the north of the Visigoths the Burgundians [4] had advanced their settlements; they had been forced out of their earlier colonies on the Middle Rhine, and after their defeats by the Romans and Huns (435–6) had received Savoy as a settlement area; thence they spread southwards into the regions of the Upper Rhône and Saône to Lyons, and north-east over the Jura (443). They did not come as conquerors, but to some extent they were summoned by the provincials themselves. Here, also, there was a division of land; and, according to a royal decree of the end of the fifth century, the Burgundian, who was regarded as a *hospes*, was to have two-thirds of the arable land, half of the demesne (house), the orchard, the forest, and the pasture, and one-third of the dependent unfree tenants. Possibly there was a great deal of uncultivated arable land, and little available labour,[5] and an endeavour was being made to bring this land also under cultivation and taxation. The Burgundians were certainly not only given deserted *colonicae*, or waste land and new assarts, and the *terra dominica* was not exempted from division.[6]

Moreover, the land was not divided into closed districts (cantons), in order that the Burgundians, who were supposed to have been hunters and nomads, should receive chiefly the mountainous and wooded regions of the Jura, and the Romans the fertile plains.[7] Tit. xxxviii, 5, of the Burgundian Law shows clearly on the contrary that Romans and Burgundians settled side by side in the same place.[8] This passage also indicates that the isolated-homestead settlement (*Hofansiedelung*) was not the prevailing type.[9]

Individual ownership of land seems to have been already in existence, even in the case of meadows and vineyards.[10] If there were still undivided arable lots in the common property of several owners, any one of the co-sharers had at any time the right to demand a division.[11] There was also waste land, especially forests, in common possession (*silva communis*). The *Lex Romana Burgundiorum* decrees that the right of using woods, mountain, and pasture should be common to all and that every man's use should be regulated by the size of his property.[12] Communal households were certainly still in existence among the *consortes*, but can hardly have been common between Roman and Burgundians. Tit. xxxviii, 7, of the Burgundian Law implies rather that the houses of Burgundians and Romans were separate even in the same settlement.[13] As among the Visigoths, the clearing

[1] See Germ. edit., i², 216, note 81. [2] Cf. Kowalevsky, *Die ökon. Entwick. Europas*, 215 ff.
[3] Cf. MG., op. cit., 157, 20, 25; 349, 10; 364, 1; 471, 15; 476, 5.
[4] See Germ. edit., i², 217, note 88. [5] See Germ. edit., i², 218, note 89.
[6] See Germ. edit., i², 218.
[7] Gingins la Sarraz, *Essai sur l'établissement des Burgundes dans la Gaule*, Mem. d. R. Accadem. di Torino, ser. i, xl, and E. Secretan, *Le premier royaume de Bourgogne*, Mem. et documents publ. par la. Soc. d'hist. de la Suisse Romande, 24 (1868).
[8] MG. *Sect.* 1, LL. *Nat. German.*, t. ii, 1, 70; Tit. xxxviii, 5.
[9] See Germ. edit., i², 219. f. [10] See *Lex Burgund.*, Tit. li, 1.
[11] *Lex Rom. Burg.* and Tit. xvii, 4. [12] Tit. xvii, 5. [13] MG., 70.

of undivided forest-land was not allowed to be to the advantage of one partner only.[1] This also shows that the Burgundians themselves cultivated their land.

In addition to the land obtained by division with the Romans, there was also property given to the Burgundians by the kings (*regis largitate* or *munificentia, publica largitione*). Here, too, the crown shared with its followers some of the rich land which had fallen to it, but if any Burgundians had received arable land with unfree tenants in this way, they were not permitted to demand either the usual third of *mancipia*, or the two-thirds of land in the place appointed to them as *hospites*, but were obliged to content themselves with less, since they had already been otherwise provided with land by the king. This measure appears to have been designed to prevent the Burgundians from enriching themselves too much, because, as is explained at the end of the law itself,[2] many illegal demands were made over and above what King Gundobad himself had earlier ordained. This is not a new law but an insistence on an old one, together with a limitation of the decreed method of division (two-thirds of the arable land, one-third of the serfs), as Gundobad refers to the earlier part of his reign and to his predecessors when speaking of gifts of crown land. We may, therefore, assume that the larger share had been the old rule, and that later it was reduced to half. This view is supported by the fact that a similar tendency to protect the Roman appears in an "Extravagant" in the Code; Burgundians coming later were not to demand more than was now (*ad presens*) necessary, i.e. half the arable land; the other half, with all *mancipia*, was to be kept by the Romans and henceforward no violence was to be done to them.[3] Thus the Roman economic organization was not destroyed.

The state of Burgundian law must have helped in the division of the land. From early times a father during his life-time was able to divide his property with his sons with equal rights (Tit. li, 1); he could do what he liked with the share left to him (the free part). Indeed in a later law he was given the right to dispose freely of the whole property, as well as of his acquisitions before the division (Tit. i, 1); but the part acquired from the Romans was excluded from this permission.[4] Moreover, after the division a son could also freely dispose of his share (li, 2). In this way many Burgundians seem to have disposed of their lots all too easily by the year 500. The king was obliged to interfere, and decree that no one could sell his land unless he had a lot or landed estate (*sortem aut possessionem*, Tit. lxxxiv, 1) elsewhere. If such a man were obliged to sell his lot, then no extraneous person should have precedence of the Roman *hospes*, and a stranger was excluded from possessing it (ibid., 2). This seems to indicate not a right of purchase on the part of the co-possessor, but a prior claim on that of the original (Roman) owner, which seems to be adequately based on the preceding partition in virtue of the *hospitalitas*.

It is further significant that decrees were made against the frequency of gifts and wills, making the latter more difficult (Tit. xliii). Those which had not five or seven witnesses, and were not in writing and signed, were not valid.[5] Moreover, an age-limit (fifteen years) was set, below which no purchase, gift, or emancipation was valid (Tit. lxxxvii).

[1] *Lex. Burgund.*, xiii. Cf. above, 97.
[2] Tit. liv, i. Cf. Germ. edit. i[2], 221, note, 3
[3] *Lex Burgund.*, Extravag., xxi, 12.
[4] MG. LL., sect 1, t. ii, 1, 41: "ut patri etiam antequam dividat de communi facultate et de labore suo cuilibet donare liceat, absque terra sortis titulo adquisita."
[5] Tit. xliii, 1.

Among the Burgundians, too, landed property was very unequally divided. With the *obtimates*, who seem to rank with the Roman *nobiles* (Tit. xxvi, 1), *mediocres*, and *inferiores personae* are also mentioned (cf. also Tit. ci); and of these the *mediocres* are expressly described as *ingenui* (Tit. xxvi, 2). In contrast to the full freemen, there is once a mention of *maiores personae* (Tit. xxxviii, 5), i.e. greater landowners. They appear here, however, to have settled within the village. If we compare with this the passage quoted above, according to which Burgundians apparently often possessed land in other places besides those where lots had been given to them as *hospites*, it becomes clear that scattered possessions and a frequent intersection and interpenetration of properties were to be found, a state of affairs which had come about naturally, in consequence of the mobility of property engendered by the uncontrolled legal rights of expropriation.

The Franks seem to provide an antithesis to the German tribes which we have hitherto been considering and essential differences have been assumed by recent scholars. Not only did they not divide the land with the Romans, but they were said to have seized at least a part of it by force. On what are these theories based? First of all on the fact that the earliest laws of the Salian Franks, the *Lex Salica*, say nothing about a division of land. This is certainly remarkable, especially as it is known that this Salic Law agrees closely with both the Visigothic and Burgundian Codes, which go back to a common source, the laws of King Euric.[1]

On closer examination, however, this argument completely loses its force. The original text of the Salic Law no longer exists and can hardly be reconstructed from the present form. Numerous additions are obvious; and, moreover, the basic text itself is not uniform, but is rather in the nature of a compilation with insertions and changes belonging to a later date. Above all, royal decrees have been recognized here and there, which do not belong to the time when the popular law was written down, but to an earlier or later date.[2] Moreover, the hypothetical original text can hardly be earlier than the end of King Clovis' reign (508–511): i.e. it did not come into being until after the establishment of the Frankish centralized state, when the old Frankish tribal kingdom had been long outgrown and had become universal, after the subjection of the Alemanni and Visigoths. As R. Sohm has acutely pointed out, this constitutes a fundamental difference from the situation in the non-Frankish territories.[3] He drew the conclusion that on this account the land-division which took place in non-Frankish territories was unknown to the Frankish constitution. But this argument would be valid only if we had a record of Frankish law at the time when the Frankish kingdom was still a tribal kingdom. If, however, it is proved that the Lex Salica is a revision and a compilation which suited and was drawn up to suit later conditions, then it is surely useless to seek from it information about conditions long since past. Even if such information had once been there it would no longer have any practical value. In fact the *testimonium ex silentio* does not in this case prove what scholars have tried to prove from it. On the contrary, the obvious dependence of the Salic Law on King Euric's laws in other directions makes it probable that its silence on the subject of a division of land was caused by conditions prevailing at the later time of its compilation, for which the decrees in the older code were no longer suitable.

[1] Cf. H. Brunner, *Deutsche RG.*, i², 438.
[2] Ibid., 431.
[3] *Die fränkische Reichs- und Gerichtsverfassung*, 35 (1871).

The possibility, therefore, remains that division of land between Franks and Romans took place earlier, perhaps in the course of the fifth century. Former scholars used rightly to point out circumstances in favour of such a theory; above all the fact that the main cause which had led to the division among the non-Frankish tribes existed here also, i.e. military service and the protection which the Germans gave to the Romans.[1] Moreover, the *Lex Salica* uses a number of Roman legal expressions of which some, such as *contubernium* and *fiscus*, are very significant[2]; and it also implies that free land-ownership of Romans (*Romanus possessor*) was of common occurrence.[3] Most scholars have agreed that on the whole the settlement of the Franks was a peaceful one, that they mostly allowed the old methods to continue,[4] and that in particular the freemen were allowed to keep their land.[5]

If in opposition to this view it be maintained that the Franks on the occasion of their first settlement did not treat the Romans so gently as the *Lex Salica* might lead one to suppose, "the destruction of Christianity in these regions was coincident with the destruction of the provincial elements." "The Franks did not in any circumstances tolerate old rights of ownership within their prescribed boundaries"; the *eremus* was the condition of Frankish settlement.[6] It must, however, be admitted that there are no proofs whatsoever for these hypotheses. The sources on which they are based never mention a disappearance or a destruction of Christianity, but speak only of the existence of the pagans. Moreover, the sources are none too remarkable; they consist of the lives of missionary saints of later times, which naturally try to extol and adorn the success of their heroes' activities at the expense of previous conditions, of which they are for the most part ignorant. The only one which tells of a banishment of Christians by the Franks is the *Vita Eleutherii*, and it is untrustworthy. But if a complete disappearance of Christianity in those districts be not proved, then the further question arises whether, even assuming a certain decline of Christianity, this was due to an extermination of the Romans by the Franks.[7] We know to-day that the Saxons used often to plunder the north coast of Gaul, and that finally after the middle of the fourth century they settled there, in Normandy and in Western Flanders.[8] The numerous place-names in *-tun* in the coast district near Boulogne-sur-Mer, and those in *-em* or *-hem* in the Ghent district, already mentioned in the records of the old Frankish monastery of St. Bertin (Sithiu),[9] are proofs and remains of these Saxon settlements.

Furthermore, it has been maintained that the behaviour of the Franks was fundamentally different at different places and at different times. "Before Clovis' time, in the districts up to the Somme, they took as much land as they wished,"[10] i.e. they expropriated land, whereas later on they acted quite differently. "In the regions conquered by Clovis and his successors, the land owned by provincials was not touched. The need of the Salians for new dwelling places must have been

[1] Cf. Gaupp, op. cit., 414 ff., and also K. F. Eichhorn, *Deutsche Staats- und Rechtsgeschichte*, i[5], 172 (1834).

[2] Cf. Waitz, *VG.*, 2[3], 89, note 3.

[3] Waitz, *Das alte Recht der sal. Franken*, 102 (1846).

[4] Cf. Eichhorn, op. cit., 1st edit. (1808), 59. "Von neueren Forschern z. B. G. Wolfram," *Jahrbuch für lothringische Geschichte*, v, 2, 234 f. (1893); L. Wirtz, "Franken und Alemannen in den Rheinlanden bis zum Jahre 496," *Bonner Jahrbücher*, 122, 217 (1912).

[5] Eichhorn, op. cit., i[5], 173; Waitz, *Das alte Recht*, 102.

[6] See Germ. edit., i, 226–7.

[7] Waitz, *VG.*, 2[3], 35, note 2.

[8] Cf. G. Kurth, *La Frontière linguistique en Belgique* (1896), 530, and Hoops, *Waldbäume*, 579 ff.

[9] Seebohm, *The English Village Community*, 2nd edit., 1883, 755 f.

[10] Brunner, *DRG.*, i, 194. Cf. Germ. edit., i[2], 228.

already sufficiently satisfied by the acquisitions up to the Somme, since, according to the evidence of later language-boundaries, their areas of compact Frankish settlement did not quite reach this river." [1]

But is it at all likely that such a difference in the behaviour of the Franks existed? If at the time of the first settlement when they had no strong monarchy they took possession chiefly of ownerless land, are we to believe that after the establishment of the monarchy by Clovis they behaved so much more leniently in the districts conquered by force than at the time of their peaceful settlement? Moreover, opportunities for confiscation and for appropriation of ownerless land must have been more numerous in the time of the great conquests than during the first settlement. The reference to later language-frontiers too can in nowise give support to this theory, for the Frankish settlements by no means conformed to these. "After the conquest Franks settled in all parts of the land, not only up to the Loire, where the Frankish was either denser than, or as dense as, the Latin population, but also beyond the Loire to southernmost Gaul and to Burgundy; it is quite clear that they settled here." [2]

It is possible to-day to trace the settlement of the Franks in much more accurate detail by means of historical evidence. From the beginning of the Christian era German tribes of the Frankish group were settling on Roman soil and were coming into contact with the Romans. Quite apart from the Batavi who, with the Frisians, had submitted to the Romans and had provided them with much-valued auxiliaries,[3] Sugambri had already been transferred in A.D. 8 by Tiberius to the left bank of the Rhine.[4] Towards the end of the third century the Frankish settlements in Gaul must have been especially numerous. After 286 the Emperor Maximian by a peaceful agreement had allowed the Franks to settle in the districts of the Nervii and Treveri, i.e. in Brabant and on the Moselle. Shortly afterwards Chamavi, Chattuarii, and Frisians invaded the land of the Batavi, and were settled by Constantius Chlorus, after he had conquered them, in the territory of the Somme and the Oise, as also in the districts of Troyes, Langres, Dijon and Autun.[5] In the fourth century Franks are mentioned among the German tribes which were settled as *coloni* (*laeti*) in Gaul with the duty of military service.[6] In Julian's time Salians followed to the Roman Toxandria across the Rhine and were confirmed in their new land by the Emperor.[7] The Chattuarii must have established their settlement before 392 in the land inhabited by the Cugerni on the left bank of the Rhine.[8]

An earlier scholar, who was especially interested in the history of the Emperor Diocletian, pointed out that even before the great Frankish invasion, northern Gaul must have been half German, in view of the great number of German colonists and soldiers who were transferred to the Roman provinces.[9] We are also told that in the fourth century Franks had great influence at the Roman court and reached high office in the Roman army and administration.[10] At the beginning

[1] Brunner, *DRG.*, i, 194.
[2] Roth, *Benefizialwesen*, 68. Cf. Germ. edit., i², 229.
[3] See above, 50.
[4] R. Schröder, *Die Franken und ihr Recht*, op. cit., ii, 9 ff.
[5] v. Wietersheim-Dahn, 1², 274.
[6] Cf. Roth, op. cit., 47; also H. Brunner, *DRG.*, 1², 54 f.
[7] R. Schröder, *Die Franken und ihr Recht*, op. cit., ii, 9 ff.
[8] Schröder, op. cit., 15.
[9] Th. Preuss, *Kaiser Diokletian und seine Zeit* (1869), 54 f.
[10] *Ammian. Marc.*, xv, 5, 11–355.

of the fifth century the *Notitia Dignitatum* mentions Frankish *laeti* near Rennes in Brittany, and in that century Roman generals such as Stilicho, Ætius, and Egidius not only fought with the Franks but received them on Roman soil. In 451 some of the Franks fought under Ætius as auxiliaries on the side of the Romans against Attila and his Huns.

Thus Franks had obtained property in Gaul long before the foundation of the monarchy (about the middle of the fifth century) and had settled among the Romans, whose culture they had for some time known and acquired. It should be noted that in the fourth century the German coloni (*laeti*) appropriated landed property to themselves without an imperial grant (*annotatio*); or they seized land beyond their alloted shares, so that the Emperor Honorius in 399 was obliged to promulgate a decree checking these abuses. It begins significantly with the remark that people from many tribes have come to Roman territory in order to have the advantage of land cultivated by the *laeti*.[1] An intermingling of Romans and Franks had thus been going on for a long time. To-day we can hardly assume that the Frankish settlements in the northern district as far as the Somme were as compact and self-contained as Lamprecht, Brunner, and Pirenne thought. If, as we have seen, Franks were settled there by Maximian at the end of the third century, and soon afterwards Constantius Chlorus divided troops of captive barbarians (Frisians, Chamavi, and Chattuarii) among the Latin provincials in the regions of the Somme and the Oise for purposes of colonization, then there must have been a considerable provincial population there, just as there was in the settlement of Toxandria by the Salians under Julian. Julian had conquered the latter, and their settlement was made with his permission, at a time when the Roman power was still unbroken.[2] The fact that considerable numbers of Saxons settled there also teaches us to be cautious.[3]

As for the agrarian system of the early Franks there can, to-day, no longer be any doubt that the system which was formerly considered to exist exclusively in Roman districts, and in them only in the sixth century,[4] was in fact already current during the first settlement of the Franks, i.e. there was nothing to prevent the private estates of Roman provincials from coming into Frankish hands through expropriation,[5] and in consequence of intercourse with the Romans the principle of free exchange of property was applied also to the land, so that in both larger and smaller estates purchase, gifts, *precariae*, and other transactions were the order of the day.[6] For the Frankish settlements were not made in completely ownerless districts nor were they entirely self-contained; they were on Roman soil where there were provincials beside the Franks. The Salic Law tells us that the Romans were looked on as subjects having equal rights with the Franks. The earlier idea that the German was considered of higher value than the Roman and that this found an expression in a higher wergeld, has been refuted by H. Brunner.[7] The mention of the *Romanus tributarius* together with and after the *Romanus possessor*

[1] "Quoniam ex multis gentibus sequentes Romanam felicitatem se ad nostrum imperium contulerunt, quibus terrae laeticae administrandae sunt. . . .", Brunner, *DRG.*, 1, 35, note 13.

[2] *Ammian. Marc.*, xvii, 8, 3–358.

[3] See above, 102.

[4] See Germ. edit., i², 232 ff.

[5] Schröder, *Forsch. z. Deutsch. Gesch.*, xix, 148; cf. also *Die zutreffenden Bemerkungen O. Gierkes Genossenschaftsrecht*, i, 80.

[6] Bethmann-Hollweg, *Der Zivilprozess d. Gemeinen Rechts*, 1868, iv, 490.

[7] *DRG.*, ii, 614, note 7.

is another proof that Roman ownership still continued; both appear in Tit. xli which is headed *de homicidiis ingenuorum*.

How are we to picture to ourselves this first Frankish settlement on Roman soil? The theories on the subject have hitherto suffered from the influence of tendencious theories of history and have taken far too little account of actual historical conditions and, least of all, of the facts established by archæological research. Proceeding from the much quoted accounts of Cæsar and Tacitus, which are extremely ambiguous and were often misunderstood,[1] scholars believed, without taking into consideration the intervening developments, that a common occupation of the land by large social groups, especially by clans (*Sippe*), took place and that at first only common ownership with communal cultivation existed. Most scholars thought, as we have seen, that these conditions lasted into the early Frankish period. These general hypotheses continued also to colour the theories concerning the period when individual ownership of land was supposed to have established itself. Among these the conception of Germanic freedom [2] in particular exerted much influence. It was impossible not to conceive that the principle dominating land settlement and division was equal rights for all free Germans. The very name of the Franks caused much mischief here, for even down to quite recent times it was interpreted as undoubtedly meaning "freeman". The tendency of all social theory was to refer this freedom to the personal position of the individual. To-day, however, we know that it is obviously to be considered in antithesis to the peoples who were subjected to the Romans.[3] But does "Franke" really mean freeman? We must not attach too great importance to the Roman meaning of the word; recent philology is inclined to derive it from "frak", meaning *ferox*, defiant, or wild and rash.[4] However this may be, the theory that the settlement was made by communities of free men with equal rights to the land is arbitrary and unfounded. It is contradicted by the evidence of the sources and the undoubted historical facts; above all, by Tacitus himself who (as we have seen) [5] expressly states that the division of land took place *secundum dignationem*. The Franks received grants of land from the Romans for military service and obviously according to Roman custom, i.e. military rank as well as social position must have been taken into account and must have caused differences.

Hand in hand with this goes, in my opinion, the importance of the "following" (*Gefolgschaft*), which played a principal part in military undertakings. Recent research has shown that already under the later Roman Emperors the Germanic *comitatus* was giving rise to new military forms.[6] Is it likely that it was without influence on the division of land among the Franks themselves? It must certainly have been the cause of considerable differences in landed property. In all probability from the very beginning the princes and army-leaders, and later the kings, granted land in unequal amounts for special services, a procedure for which the laws provide direct evidence among the Visigoths and Burgundians.[7] Concerning Merovingian gifts of land there is evidence that some "grant a property which may be inherited or given away without limitation, like the normal

[1] See above, 33 ff. [2] Cf. above, 44 f.
[3] Cf. O. Bremer, *Ethnographie der germanischen Stämme*, op. cit., iii[2], 878 (1900).
[4] Cf. the article "Franken" by R. Much in Hoop's *Reallexikon der germanischen Altertumskunde*.
[5] Cf. above, 38.
[6] Cf. H. Brunner, *DRG.*, i[2], 60 (*Die Truppe der protectores i m 3. und die brucellarii des 4. Jahrhunderts*).
[7] Cf. above, 98, note 6, and 100.

Roman gift of property".[1] Seigneurial estates (*Grundherrschaften*) were in existence among the Germans in the time of Tacitus, and certainly increased with the introduction of Catholicism and the establishment of the monarchy in the period of the great conquests and the extension of the kingdom; and the number of the equally ancient half-free and unfree men who were dependent on them certainly increased likewise. In the *Lex Salica* there appear, side by side with the Roman *tributarius*, the *letus* and *servus* (Tit. xxvi) who are provided with land (Tit. l). On the other hand it must be emphasized that so far no single proof has been found that land was granted by the king as common property to a community of neighbours or to an association of freemen; this is merely an artificial fabrication based on hypotheses which have all been proved untenable.

Moreover, the place-names in *-ing* or *-ingen* can no longer be considered evidence for clan settlements, based on blood relationship, since various scholars have shown that the suffix *-ing* simply denotes "appertaining to", in the geographical sense as well as in other senses,[2] and does not imply only a family connection. English and German scholars have already maintained that it is wrong to look on these place-names merely as patronymics in the genitive plural form. The suffix *-ing* is added not only to family names but to the names of individuals[3]; therefore these place-names may equally well denote family settlements or settlements on the land of some great landowner.

Moreover, it is in the districts of Frankish settlement that the older theory finds its chief contradictions; for the place-names in *-ing* are almost completely absent in the region where the existence of old Frankish settlements has been proved for certain.[4] In fact, an attempt was made earlier to use them to determine the boundaries of Frankish and Alemannic expansion, by declaring the place-names in *-ingen* to be specifically Alemannic. If they really do denote clan or kinship settlements, then such settlements must have been almost completely absent among the Franks. To get over this difficulty, it has been suggested that in the Frankish period the place-names in *-ingen*, which presumably once existed, were changed into names in *-heim*. The old free Mark-associations, which were the foundation of the former places were supposed in consequence of the Frankish conquest to have been reduced to bondage by the chiefs and their followings, and thus these place-names in *-heim*, denoting seigneurial land-ownership finally came into being.[5] Against this it must be pointed out that in those very regions where place-names in *-heim* are found in greatest numbers, in Alsace and in the Hither Palatinate, the whole historical development of the country points to free peasant settlements, and there is no trace of any system of seigneurial land-ownership.[6] It must also be pointed out that place-names in *-heim* do not show a fundamental difference of agricultural type from those in *-ingen*. They were not merely seigneurial estates, but may have also included peasant village settlements. They are also not specifically Frankish but are just as common to the German peoples in general

[1] Brunner, "Die Landschenkungen der Merowinger und der Agilolfinger," *Sitz-Ber. d. Berliner Akademie*, lii, 1173 ff. (1885).

[2] See Germ. edit., i², 238, note 189.

[3] Cf. Seebohm, *The English Village Community*, 1883; Stevenson, in *English Histor. Review*, iv, 356, note 6.

[4] For place-names in *-ingen* in the Hundsrück and Eifel cf. K. Schumacher, *Prähistor. Zeitschr.*, viii, 162 (1916).

[5] A. Schiber, "Germanische Siedelungen in Lothringen und in England," *Jahrbuch der Gesellschaft für lothringische Geschichte*, xii, 187 (1900).

[6] *Tilles Gesch.-Blätter*, iii, 161 ff.

as those in *-ingen*.[1] As to the alleged change of names, Seebohm showed that place-names in *-villa* were often changed in German to *-heim*,[2] and about the same time Lamprecht noticed the same fact independently and produced examples from the Moselle district. Among these were not only names in which *-heim* stands for an original *-ingen*, but also some where a still further change in the same name gives *-ingen* again: e.g. Frankingern, Frankenheim, Frenkingen.[3] From this it would appear that we have here not so much a case of change of name as one of several names with the same meaning. O. Bethge has recently emphasized correctly that in early times *-heim*, *-hausen*, *-statt*, *-dorf* could change about in the same place-names, just as in the Latin capitularies and records we find *locus*, *villa*, *curtis*, and *vicus* for the same place.[4] Thus the valuable data which recent research into place-names has yielded have undoubtedly invalidated certain criteria which at one time played an important part in the history of settlements, or have, to say the least of it, made them very unsafe and unreliable. However negative these results may at first appear, this latest development in the study of place-names has cleared the way for a great and unexpected increase of positive knowledge, and for this reason it would be ungrateful to undervalue even those investigations whose conclusions do not now seem tenable. For it was owing to these and to the mutual explanations of those learned in place-names, that many fruitful observations were made which encouraged further developments. We have already seen what important connections were discovered as a result of the most recent research concerning place-names in *-weiler*.[5]

It is now possible to suggest a new explanation for the place-names in *-ingen*, basing it on the preceding remarks and on those made by supporters of the earlier theory. These *-ingen* terminations belong without doubt to the earliest place-names, if we reject the spurious analogous formations of later times. In a study of Hohenzollern place-, field-, and forest-names, it has been shown that the Celtic *-acum* is exactly equivalent to the later *-ing*.[6] It has also been found that the same is true of the Moselle region.[7] On the other hand, Seebohm was struck by the fact that the great number of places in *-ing* in England and northern France chiefly occur on old Roman soil.[8] Following the earlier theory, he tried to connect them with the German *laeti* of the time of Probus, Maximian, and Constantius Chlorus. More recently S. Riezler considered it most significant that some spurious place-names in *-ing* seem to be directly connected with a Roman place-name.[9] In Bavaria these *-ing* endings generally belong to the oldest place-names and appear in the flat and especially fertile regions, where prehistoric and Roman excavations have been made.[10] Finally, reference may be made to K.-v. Ettmayer's researches in Tyrol.[11] He finds that it is characteristic of the villages in *-ing* in the Upper Inn valley that they are always on the best sites, usually on the sunny side. He thought this could be explained only by assuming that they had belonged to a "ruling" people and could hardly owe their origin to a peaceful and gradual

[1] See Germ. edit., i[2] i, 240.
[2] Op. cit., 245.
[3] *Fränkische Wanderungen und Ansiedelungen*, op. cit., iv, 245 f. (1882).
[4] "Fränkische Siedelungen in Deutschland, auf Grund von Ortsnamen festgestellt," *Wörter und Sachen*, vi, 85 (1915).
[5] Cf. above, 58.
[6] Birlinger, *Alemannia*, vi, 6.
[7] Lamprecht, *Deutsches Wirtschaftsleben im Mittelalter*, i, 154.
[8] Seebohm, op. cit.
[9] *Sitz-Ber. der bayrischen Akademie*, 1909, ii, 6.
[10] Ibid., 7.
[11] "Die geschichtlichen Grundlagen der Spracheneinteilung in Tirol," *Mitteil. d. Instit., Erg.-Bd.*, ix, 23 (1915).

infiltration of Germanic inhabitants in an otherwise Roman provincial territory. The main district with place-names in *-ingen* is, however, situated in modern Baden and Württemberg, where Roman life lasted longest. For this very reason most scholars have tried to prove that these place-names were specifically Alemannic. Here I would refer with special emphasis to the results of archæological research. The places in *-ing* where Roman excavations have been made, are becoming more and more numerous.[1] This is so in Lorraine, in the Bavarian palatinate, in the regions of most ancient settlement (indicated by prehistoric finds) in Heidelberg, in Baden, in Württemberg, in Hessen, and also in Bavaria. It has already been pointed out in discussing the place-names terminating in *-walch* in Noricum, that near them and among definitely Roman names there are also numerous places with the *-ing* ending. These examples may suffice to make it clear that the old Germanic settlements in *-ing* often succeed to Roman and even pre-Roman settlements. A continuity of culture is therefore apparent here, similar to that which we have already seen in the places in *-weiler*.[2] Good fortune allows us to find documentary proof of this continuity in the case of a few places in *-ing* also.[3] In the district of the Hunsrück and the Eifel near the Saar and the Sauer, place-names in *-ing* are in the majority, and here also long barrows are frequent.[4]

And now let us consider the phenomenon found generally and not only in Noricum; just as the places in *-ing* are found on or near sites of Roman civilization, and sometimes near places in *-weiler*, so likewise places in *-heim* are often found in the neighbourhood. In Lorraine the old Frankish royal palace Theodonisvilla (Diedenhofen) lies in a circle of numerous places in *-ingen*. In the very old cultivated land of the lower Neckar, large numbers of places in *-ing* and *-heim* are found together; the same thing is true of the land of Herbrechtingen on the Brenz. Similarly in the Middle Salzach, the regions of Salzburg and Tittmoning, a whole series of places in *-heim* are found scattered among numerous places in *-ing* along the important Roman road.[5] From the pattern of distribution of these places in *-heim* among those in *-ing*, Bethge concluded that there was a definite system of settlement, and he explains their presence where old royal property can be proved by a Frankish colonization of the sixth to the ninth century. His views are worthy of careful consideration. Such a colonization is certainly to be presumed where the names (such as Nord- and Südheim, Ost- and Westheim) give the orientation and point to a centre which makes them comprehensible.[6] Since places in *-ing* often provide these points of departure, Bethge's assumptions have much to commend them, above all, because, in the Carolingian period, as we know from the records, such an extensive colonization of the sort must certainly have taken place.[7] Many must be explained in this way, and must belong to this later period (eighth to ninth centuries); yet many Frankish places in *-heim*, *-hausen*, and *-hofen* certainly go back to an earlier time. Places in *-ingen* are almost entirely lacking in many districts which are well-known to have been Frankish settlements, especially in the earliest ones in Flanders and the north

[1] See bibliographical references in Germ. edit., i[2], 243 f.
[2] See above, 66.
[3] Cf. above, 58 ff.
[4] K. Schumacher, *Prähist. Zeitschr.*, viii, 162 (1916).
[5] O. Bethge, "Fränkische Siedelungen in Deutschland," op. cit., 74.
[6] Ibid., 85.
[7] Dopsch, *Wirtschaftsentwicklung der Karolingerzeit*, i, 174 = i[2], 194.

of France, on the Moselle, and in Alsace. One of the possible explanations for this may be briefly indicated here.

If we consult the latest archæological discoveries, we find that settlements in *-heim* are often found on old cultivated land. This is proved by a few expecially important examples for which we have ample documentary records from the early Frankish period. At Handschuchsheim, near Heidelberg, pit-dwellings of the Celtic early La-Tène period have been found.[1] The earliest Lorsch documents of the eighth and ninth centuries already show a very extensive and intensive settlement there. In the archives of the monastery of Lorsch alone a surprisingly large number of grants by various donors—no fewer than 114—occur.[2] Such a subdivision of land in one place indicates a long period of settlement; it cannot have developed within the eighth century. Take, for example, Heppenheim on the Bergstrasse. On the wooded heights near it there was already a village in Neolithic times[3]; close by a Roman villa has been excavated and fortifications and a quarry a little farther off[4]; and for the early Frankish period there is one of the earliest Markbeschreibungen (surveys of the bounds of the Mark) which we possess.[5] This continuity of settlement, and the small sub-divisions of the land shown in the Lorsch records,[6] are crushing evidence against the hypothesis of an early Frankish communal field system and against the theory of "Mark-settlement" as a peculiarly Frankish method of occupying land which had presumably been waste or ownerless.[7] Here also the Frankish settlement known to us in the eighth century must have gone back to an earlier date.

It is quite clear that the Franks first took possession of land which had already been cultivated and that they settled on the sites of Roman and pre-Roman settlements. Let us add to this the general conclusions as to continuity of settlement which were arrived at in the preceding chapter. In the case of many German places it was proved that early Frankish royal and fiscal land goes back to Roman domain land.[8] It has been shown that nearly all the old Frankish royal palaces were situated in places where there had been Roman settlements.[9] This is true from Alsace to Noricum. These royal palaces were not, indeed, the centres of a centralized economic system,[10] but they were the King's castles, partly fortified and often of military importance. Even if we are cautious in accepting Rübel's theories about the systematic placing of such palaces and fortresses along the military roads at definite halting-places and intervals,[11] there is certainly some truth in them. But too much has been claimed as a splendid new system which in reality can be explained quite easily by a reference to the preceding development. Thus much that is ascribed to Charles the Great was the custom long before him,

[1] E. Wagner, *Fundstätten*, ii, 264 (1911).

[2] See my *Wirtschaftsentwicklung der Karolingerzeit*, i, 227 = i², 249.

[3] *Archiv. f. hess. Gesch.*, 1902, 303, and *Korr.-Bl. d. Ges.-Ver.*, 1904, 341. Schumacher, *Besiedlungs- u. Kulturgesch. der Rheinlande*, i, 47, No. 23 (1921).

[4] Cf. H. Giess, "Beitr. zur Erforschung der ältesten Ansiedelungen und Verkehrswege in der Umgebung von Heppenheim," *Archiv. f. hess. Gesch.*, New Series, iv, 261 ff. (1907). Schumacher, op. cit.

[5] Cf. O. Bethge, "Zu den Karolingischen Grenzbeschreibungen von Heppenheim und Michelstadt i. O." *Vierteljahrsschr. f. Soz. u. WG.*, xii, 71 ff.

[6] At least forty charters are in existence for Lorsch alone: *Cod. dipl. Lauresham*, notes 858–896.

[7] Rübel, *Die Franken*, 159. [8] Cf. 55 ff. [9] See above, 56 ff.

[10] Cf. Dopsch, *Wirtschaftsentwicklung der Karoling. Zeit*, i, 159 f. = i², 179 f.

[11] "Reichshöfe im Lippe-, Ruhr- und Diemelgebiete und am Hellwege," *Beitr. zur Geschichte Dortmunds und der Grafschaft Mark*, 10 (1901), and "Das fränkische Eroberungs- und Siedelungssystem in Elsass," *Korr.-Bl. d. Ges.-Ver.*, 1908, 353 ff.

probably even at the time of the first conquest by Clovis. We must not forget that even Charles's policy of expansion corresponded to old Frankish tradition; it had its precedent not only in Clovis but in Theudebert, who extended his sway to Pannonia about the middle of the sixth century. Moreover, we must remember what we have learnt about the first appearance of the Franks; in early times they performed military service for the Romans and held high office in the Roman army and administration. Thus they had an opportunity of learning what the Romans had accomplished with such genius in the frontier provinces, viz. military rule on the basis of a well-considered system of fortifications and communications, and, on the other hand, a system of administration, which had an economic significance in opening up the land.[1]

Is it likely that the Franks, whose great adaptability is stressed by a sixth century Roman author, were unteachable in this respect?[2] Their system of administration followed directly on the previous Roman one, as the Gau names prove, for they are based on the centres of the Roman *pagi*, towns and forts, e.g., Koln-gau, Bonn, Deutz-, Metz-, Worms-, Speyer-, Lobden-, and Nida-gau, etc.[3] There is no doubt that they did not lose the military advantages of the Roman positions.[4] They immediately occupied places which were important for the military security and maintenance of the country, and also for road-communications and river-crossings.[5] The latest archæological excavations have shown that very soon they also occupied places which used to be regarded as later settlements.[6] A very characteristic example is the old Frankenfurt on the lower Main.[7] The Roman water-works instituted by Valentinian for defensive purposes at Alta Ripa on the Neckar became Frankish royal property.[8] Ladenburg on the Lower Neckar, the old Lopodunum, survived from prehistoric times through Roman, Alemannic, and early Frankish times, and under the Carolingians possessed a royal court (Saal), which stood on the site of the old Roman fort. Close to the ford over the Neckar opposite Heidelberg the fort Neuenheim has been found, which was built under Vespasian to protect the road and to cover the ford.[9] As excavations proceed, cases become more and more numerous in which Roman forts or fortifications, or at any rate Roman remains of some kind, are found in places in *-heim*. It appears that there was a dike across the valley at Heppenheim.[10] There were Roman forts in Hofheim, Heddernheim, and Welzheim; and Roman remains have been found at Ödheim (on the Kocher), near Gernsheim (above Mainz), and at Pforzheim.[11] These examples are sufficient support from the archæological side for the theory advanced above that the Franks also settled in Merovingian times in the Main and Neckar districts, in Baden, Hessen, and Württemberg, where they first occupied the old Roman settlements of military importance and thence developed a later colonization in the Carolingian period. The same is true of Bavaria, as we see from the facts given about the royal palaces.[12]

These considerations also afford an answer to the old problem as to whether

[1] See E. Fabricius, "*Die Besitznahme Badens durch die Römer*," 1905.
[2] *Agathias Histor.*, i, 2; cf. above, 71, note 5.
[3] Cf. Th. Burcklhardt-Biedermann, *Augusta Raurica*, 45, and recently G. Weise, "Fränkischer Gau- und römische civitas im Rhein- und Maingebiet," *Germania*, iii, 97 ff.
[4] See Germ. edit., i[2], 249.
[5] Cf. also K. Schumacher, in *Prähistor. Zeitschr.*, viii, 163 (1916).
[6] Cf. Schumacher, *Besiedlungs- und Kulturgesch. d. Rheinlande*, 1, 50, note 27 (1921).
[7] Cf. above, 75 f.
[8] See Germ. edit. i[2], 112 f.
[9] Fabricius, op. cit., 44 f.
[10] Giess, op. cit., 278.
[11] Cf. Fabricius, op. cit., 43–5, 50, 69.
[12] Cf. above, 64.

the Franks preferred settlement in single homesteads or were familiar with nucleated *village* settlements from the beginning. In favour of the predominance of isolated homesteads it has been argued that the names in *-heim* "were peculiar to the Salians; *-heim* originally meant house, and when used with patronymics, it indicated original settlements of single families".[1] But it has since been proved that nucleated villages often occurred next door to settlements of the single homestead type.[2] In my opinion these types are not mutually exclusive, but may occur side by side,[3] and this view is supported by the certain and positive results of Meitzen's research into field-maps, which must now be considered in detail, since special importance is attached to it both by recent investigators of place-names and by the latest supporters of the old Mark-association theory.[4] Meitzen starts from the fact that both single homestead and village settlements are to be found in areas of Frankish colonization. Since this difference is not to be explained by the nature of the land, and since Meitzen is convinced that single homesteads were a peculiarity of Celtic settlement, he looks on the villages as compared with this older form, as an "invasion of the sphere of the single homesteads", and considers that the small scattered dwellings were freely or reluctantly given up and done away with. Meitzen ascribes the villages to the victorious conquests of the Germans, for he thinks that there was no change in the form of Celtic settlement during the Roman period. Throughout he considers the single homestead to be the original form, and imagines the villages to have arisen owing to a forced union of several single homesteads into one whole; he thinks that the character of numerous villages in the north of France and the Rhineland corresponds exactly with that of the villages of the old German tribal land.[5] We are therefore to imagine that the Germans transferred to the north-west, to northern France, and to the Rhinelands, their own peculiar form of settlement as developed, for example, in Upper Germany.

In order to refute this theory, I shall not make use of the fact that the process of Frankish settlement was in reality the exact contrary of this, from north-west to south-east. I shall content myself with a closer examination of Meitzen's *German Folk Gewanndörfer in Upper Germany*. These are supposed by him to represent the earliest form of settlement in Germany. On a basis of association all the German peoples developed nucleated villages with scattered holdings and equal shares (hides or *Hufen*) in the village land.[6] But what light is Meitzen able to throw upon the character of this form of national settlement? The land belonging to the village is cut up into fields in such a way that there is no way of access to some plots. The arable part of a single property, the *Hufe*, is disposed in scattered strips over these open fields. The roads run in different directions without definite plan. Thus no principle is to be found other than a complete absence of principle. The presumed equality of the *Hufen*[7] is only brought about by Meitzen's attempt to justify apparent inequalities by reference to tax

[1] Inama Sternegg, *Deutsche Wirtschaftsgeschichte*, I, 42 f.

[2] Schröder, *Die Franken und ihr Recht*, op. cit., 49 ff.; see the opinion of Vanderkinderes (Brussels) quoted on p. 50.

[3] Cf. K. Lamprecht, *Zeitschr. d. Bergisch. Gesch.-Ber.*, 16 (1880), and *Deutsches Wirtschaftsleben*, i, 7; Dahn, *Könige*, vii, 1, 97 ff.; v. Halban-Blumenstock, *Die Entstehung des deutschen Immobiliareigentums*, 225; Th. Ilgen, *Westd. Zeitschr.*, xxxii, 14 (1913).

[4] Cf. Germ. edit., i², 251.

[5] Op. cit., 520.

[6] Op. cit., 431.

[7] See Germ. edit., i², 253, note 275.

assessment. But what do we know to-day about the possibilities of tax assessment in the early German period?

Above all Meitzen has produced no documentary evidence that the five villages which he gives as representatives of that type (*Anlagen*, No. 37–41), actually go back to the period of "folk" settlement. All that we know about them from his account in the *Anlagen*, (Vol. iii) and from other sources merely proves that they were seigneurial property in historical times.[1] This fact alone would suffice to explain the equality of the separate *Hufen* as a basis for the imposition of dues and services. Both scattered strips, with no means of access to the separate plots of land,[2] and the three-field system[3] are characteristics of the manorial system. The main evidence for the supposed national character of these villages, the place-names in *-ing* (Nos. 38, 39), has now been disproved. Thus we are left with no proof, or hardly any proof, that those villages were old settlements of associated freemen with equal rights and that their planning was based on a system of communal cultivation.

A whole series of objections from the standpoint of agricultural technique may, moreover, be brought against Meitzen's theory, for, if we consider its logical consequences, it is not only difficult to reconcile it with a rational economic system, but it is in direct contradiction to the views of those legal historians who support the Mark theory.[4] The absolute irrationality of this way of dividing up the land has already been pointed out by economists.[5] This sub-division of the separate hides into numerous strips scattered over the various open fields is surely an argument against the theory that the collective property in these old folk-villages was given by the king to an association of equal freemen, or was founded by them as a Mark-association. Is it not logical to suppose that community of property, in which the individual would have only a right of use, together with communal field cultivation, would have resulted in unity, rather than in sub-division? On the other hand, this irregular subdivision is easily explicable if we assume an individual ownership on the part of free landowners with independent rights of disposal. This assumption has historical possibility, nay more, probability, on its side, for these open field villages appear in districts which were settled and cultivated by the Romans and even earlier, in pre-historic and Celtic times. If, as we have argued, there was an historical continuity of cultivation from that early period, then this method of dividing the soil is quite comprehensible, especially as individual ownership with rights of disposal was in full force there from the Roman period at the latest, as also was the scattered strip system, of which there is already evidence at that time.[6]

The extraordinary irregularity of the old German villages is based on the historical continuity of settlement, which can be conclusively proved for the places selected by Meitzen as types.[7] The Franks and other German tribes did not introduce an ancient and national peculiarity of their own into the territory of the earlier Celtic settlement, thereby forcibly changing it; they were just as conservative in their attitude to their predecessors as Meitzen assumes the Romans to have

[1] For Marbach (No. 41), cf. *Das Habsburgische Urbar, herausgeg. v. Maag.*, i, 377, and ii, 158.
[2] Cf. Seebohm, op. cit., and Nasse, *Die Feldgemeinschaft in England*, 1869.
[3] Cf. W. Fleischmann, *Journal für Landwirtschaft*, 51, also above.
[4] See Germ. edit., i², 255 f.
[5] Cf. M. Weber, *Conrads Jahrb. für Nationalökonomie und Statistik*, lxxxiii, 464.
[6] See under § 5.
[7] This is especially true of Maden in Hessen, the village land of which has been taken by Meitzen as a typical example of open field distribution (op. cit., vol. iii, Anl., No. 15; cf. ibid., i, 99).

been. It was to their own military and economic interest to maintain and to develop the positive and methodical achievements of the Romans.

We can now understand the opinion which the East Roman writer, Agathias, expressed about the Franks in the sixth century. He considers them very cultured for non-Romans (barbarians), and lays special stress on their justice and harmony. He says that besides religion they had adopted from the Romans not only trade laws and marriage laws, but also laws and methods of government and administration; they hardly differed from the Romans except in dress and speech. This description, it has been argued, is too flattering; but even such a careful critic as Waitz rightly considered it to have great significance.[1] Since then it has certainly gained in importance; for all that has been said of the entrance of Franks into the Roman army and administration, of their settlement on Roman soil, and their contact with Roman provincials, shows that these moderate and educable people with their appreciation of Roman culture, had by the sixth century had ample opportunity of utilizing its advantages for their own benefit.

Like the Franks, the Alemanni also came early into contact with the Romans, at the beginning of the third century (213). In the fourth century at latest they were settled on Roman soil. Ammianus Marcellinus expressly states that their dwellings were partly, indeed, poor huts, but partly houses built in the Roman style.[2] From the Main they spread over the imperial frontier to the south as far as Lake Constance, eastwards to the Lech, and westwards to the Rhine, which they had crossed by the middle of the fifth century; they occupied the Palatinate, Alsace, and most of Switzerland. After their conquest by the Franks (496) [3] they were forced from their northern territories, but Frankish influence in this earlier pre-Carolingian period must not be exaggerated, for at the beginning of Carolingian rule we find the old separate and independent life of the Alemanni asserting itself in their well-known insurrections.

Various assumptions of earlier scholars have become untenable in the light of recent investigations. We must, indeed, be prepared to draw the logical deductions from this new knowledge much more boldly than K. Weller has done, for, although he himself has made several very acute observations, he clings too timidly to the old hypotheses of the economic historians, and in particular to the theory of destruction and demolition. It is not true that the Alemanni destroyed most of the Roman villas during the wars which preceded the final conquest,[4] or that they often settled outside the Roman settlements. For the passage from Ammian refers to the towns and merely tells us that the Alemanni did not like to settle within town walls. Moreover, it is now certain that even there they did not settle outside the old Roman towns, but actually on their land, as is strikingly shown at Strassburg.[5] Both here and elsewhere, archæological research has proved that Alemannic settlements arose on a number of Roman sites. Alemannic remains of the fifth century have been found in Bruchsal, Wiesloch, Neuenheim, etc., i.e. at the mouths of the valleys in the Kraichgau and the Odenwald (also in Tribur, Stockstadt, etc.) where the Romans also settled.[6] The countless names in *-weiler* are, as we know to-day, not a peculiarity of Alemannic settlement, but

[1] VG ii², 73. [2] xviii, 2, 15, and also xvii, 1, 8.
[3] Cf. L. Wirtz, "Franken und Alemannen in den Rheinlanden," *Bonner Jahrbücher*, cxxii, 170 ff. (1912).
[4] See Germ. edit., i², 260, note 298.
[5] Cf. above, 77 f.
[6] Cf. K. Schumacher, *Siedelungs- u. Kulturgesch. d. Rheinlande*, 1, 198 (1921).

are closely connected with Roman colonization. We saw that such places are especially frequent on Roman soil.[1] The same is true of the second great group of place-names which were earlier regarded as Alemannic, those in *-ingen*.[2] This is quite comprehensible, for the Alemanni occupied districts which were thickly settled and cultivated in late Roman times, protected as they were by the imperial frontier and its numerous fortifications. We have to thank recent researches into the Roman *Limes* for new information on this point.[3] They settled on the *agri decumati* which were richly developed agriculturally, and thus, after the collapse of Roman power, they were continuously exposed to strong Roman influences, the more so as they were wedged in between the Burgundians in the west and the Rhæto-Romans in the east, both of whom had a strong Latin provincial admixture. Moreover, the main roads to and from Italy went through their territory and were never quite without traffic. Thus modern research has made the importance of the Roman basis much clearer, and a far-reaching influence of provincial life must be assumed. At the same time it must be admitted that not all place-names in *-weiler* are to be considered Roman-provincial and to be derived from *villa*. Here, as in places in *-ingen*, there may also be analogous formations belonging to later times. In the Frankish records *vilarium* sometimes means homestead and sometimes a settlement just made in newly broken ground.[4]

Unfortunately we have no very informative sources for the older tribal period before the Frankish conquest which took place very early (496). Most of the evidence produced by former scholars rests on *a posteriori* conclusions of a much later time. The *Pactus Alamannorum* belongs to the seventh and the *Lex Alamannorum* to the eighth century, and they can be used only with considerable caution for earlier times. But it seems to me all the more noteworthy that more recent scholars have discerned a strong Roman influence in these records.[5] K. Weller takes the view [6] that "among the Alemanni at the time of their immigration the natural division of the folk into clans, which had determined the arrangement of their army during the migrations, was especially pronounced and kept its importance long after they had settled, longer indeed than in any other German tribe." [7]

As a matter of fact, settlements such as those presumed by Weiler would be practical only in an unowned or waste region, which fits in with the old destruction theory. If, however, as we may now almost certainly assume, there was continuity of settlement, and if the rights of the remaining Romans were intact, it is obvious that these fabrications are untenable. When we consider the oft-quoted passage in the *Lex Alamannorum* about the strife of the *genealogiae* over their boundaries (Tit. lxxxi), we may not be able to deny that clans played a part of some importance in the settlement [8]; yet we must not overlook the great influence which the military organization of the people, especially the existence of followings, must have had on such a warlike tribe as the Alemanni. A fourth-century statement seems to prove that the "manorial" estate (*Grundherrschaft*) was

[1] See above, 58. [2] Cf. above, 107 f.

[3] I refer especially to the work of E. Fabricius on the place-names of Baden under the Romans, 1905, and Lachenmaier, "Die Okkupation des Limesgebietes," *Württ., Vierteljahrsch.*, xv, 187 ff. (1906), and Th. Burckhardt-Biedermann, *Das Kastell Augusta Raurica*, 1910.

[4] Cf. documents of the eighth-century edited by Wartmann, U.B. v. St. Gallen, 1, notes 4, 20, 348.

[5] Kowalewsky, op. cit., 279 ff.

[6] *Ansiedelungsgeschichte des württemberg Frankens*, op. cit., 32.

[7] See detailed argument in Germ. edit., i², 262.

[8] Kowalewsky, op. cit., 1, 209, assumes from place-names in *-icon* that the Alemanni had settled in Helvetia in clans.

very early developed here. Libanius writes; "There are great villages belonging to many owners, each of whom possesses only a small piece of land; and there are other villages which have one lord and are tilled by tenants and *coloni*." [1] Two important conclusions may be drawn from this, first that there already existed nucleated manorial villages which were let out in lots by the lords to unfree or half-free men, and, secondly, that within the larger villages there was already a considerable sub-division of land-ownership. Moreover, Ammianus' report of Julian's retreat after the Strassburg defeat (357), makes it evident that the *villae* mentioned here must have been large and important villages.[2]

The conditions which we see reflected in the laws are the same as those displayed in these fourth century descriptions. "The economic conditions of the Lex show no trace of common ownership of the hundred, of the right of inheritance of *vicini*, of common pasture, or indeed of any institution which would lead to the assumption of a Mark-association." [3] On the contrary, we here see large seigneurial property fully developed, property not merely of the king and of the church, to which gifts were allowed without dispute, but of the laity itself.[4] The organization of society is clearly indicated by the wergeld. According to the Pactus the *meliorissimi* (i.e. *primi*) pay 240, the *mediani* 200, and the *minofledi* 160 shillings. A hundred years later the Lex distinguishes only two classes, so that the *minofledi* appear as *liberi* and the first class is not especially emphasized.[5] By the *minofledi* are meant the small peasant-farmers.[6] The *mediani* must have been at any rate greater landowners, without necessarily being a lower nobility. From this distinction between *meliores* and *minofledi*, it can be concluded that a difference in ownership existed, the former being great estate owners, the latter small peasant holders.[7] Beside the lords with their great estates there stood the free landowners who managed their own land by their own labour. This is proved by the Lex Alamannorum, according to which manual labour (*opera servilia*) is forbidden on Sundays not only to serfs but to *liberi* (Tit. xxxviii). As anyone guilty for the third time of a breach of this law was punished by the loss of one-third of his *hereditas*, the *liberi* cannot have been merely free tenants of a seigneurial property.

The right of the individual to dispose of his own [8] property in land must have been already considerably developed; for the Lex considers it necessary to oppose the expropriation of famil property at the father's death before there has been an equal division among the surviving sons.[9] This clearly corresponds to the statements made in deeds of gifts to the church, that the property thus given comes from that part of the alod which has been handed down to the giver according to law. The recurring formula in such a case is obviously in accordance with the Title of the Lex quoted above: *possessiones (res) . . . quas pater meus condam mihi moriens dereliquid et ego contra germano meo . . . in possessionem*

[1] *Libanii sophistae orationes*, ed. Reiske, Altenburg, 1793, ii, 507 = *Oratio de patrociniis. Opera Libanii*, edit., Teubner (Förster), iii, 469, c. 11. Cf. Zulueta, "Patronage in the Later Empire," *Oxford Studies in Social and Legal History* (P. Vinogradoff), 1, 29 ff. (1909).

[2] Julian's troops plundered: "*opulentas* pecore villas et frugibus rapiebat nulli parcendo; extractisque captivis domicilia cuncta curatius ritu Romano constructa flammis subditis exurebat," *Ammianus*, xvii, 1, 7.

[3] K. Lehmann, *N. Archiv.*, x, 495 (1885). [4] Tit. i, 1.

[5] Cf. the examples from the Alemannic Code in *d. Mon. Germ.*, 4°, LL. Sect i, t. V, 1 (1888), (K. Lehmann).

[6] Cf. also R. Schröder, *Deutsche RG.*[5], 226, and Dahn, op. cit., ix, 1, 158, who considers them "free owners of small holdings".

[7] Schröder, *Die Franken und ihr Recht*, op. cit., 54.

[8] Tit. lxvii, 2; lxxvi; lxxvii. [9] Tit. lxxxv.

recepi[1]; or, *quicquid . . . genitor meus . . . a consortibus suis in partem visus fuit accepisse et ille postea suis dividenda dimisit heredibus* (No. 155). The law of inheritance states that the right of women in the inheritance lies not only in the movables but in the land.[2] It is clear, therefore, that there was already an active development in the mobility of land, which must have caused considerable division and subdivision of old family estates. This is also indicated in the charters by the frequent mention of acquisitions side by side with the alod, in the detailed description of the property which is being granted. The church as grantee would stress this distinction all the more because the individual's right to dispose of his acquisitions could not be disputed by his relatives. Numerous examples of this are given in the note,[3] because it has been maintained that the *conquesitum* is seldom mentioned in Alemannic sources of this early period.[4]

This acquisition must have referred partly to new assarts made in the neighbouring waste from old settlements which had existed in Roman times. This would also explain the analogous formation of place-names in *-weiler*,[5] which are especially frequent there. Beside the old colonizations of the fourth to the sixth centuries, a later period of settlement may be noticed, which came after the Frankish conquest of the eighth and ninth centuries. Recent research has proved this in another remarkably acute instance. V. Ernst has compared the older place-names in Upper Swabia with the proper names found in documents of the eighth and ninth centuries and has found a considerable similarity; from this he has rightly concluded that there was a later settlement at the time to which he ascribes those place-names.[6] This gives a greater importance to certain other observations which may be connected with it. Oechsli has proved that at Chur there is a similarity between the proper names mentioned in the Register (*Urbar*) of the royal estates in the time of the Emperor Lewis the Pious and those of the contemporory St. Gall documents.[7] If the reference in the *Urbar* is to free land-owners in the neighbourhood of the royal property, who were cultivating parts of that as well as their own land, then there must have been a similar colonization in both cases. This is supported by the conclusions about Frankish colonization, etc., which Bethge drew from his research into Swabian place-names.[8] He fortunately realized that a group of settlements, the names of which serve the purposes of orientation and point to some closer interconnection, e.g. Nord- and Süd-, Ost- and West-heim, may often be explained by the presence of a lord's seat in their midst, whether the king's or that of any other large landed proprietor, and that this points to later colonization, especially where such places lie among older settlements in *-ingen*. In support of this, reference may be made to a documentary example which has hitherto escaped attention. In the Alemannic Law of this later period, the *coloni* both of the King and of the church are mentioned; and the reference here is to free settlers.[9] This cannot be a mere chance.

[1] Cf. UB. v. St. Gallen, 1, notes 5, 15, 19, 25, 27, 28, 30, 31, 33, 38, 40, 52, 74, 85, 144, 146, 155, 159, 190, 201, 202, 206, 215, 297, 305, 334, 360, etc.

[2] Tit. lv.

[3] Cf. UB. v. St. Gallen, notes 7, 10, 12, 25, 32, 33, 38, 39, 60, 74, 107, 147, 153, 157, 195, 198, 202, 203, 204, 205, 206, 215, 216, 229, 238, 249, 291, 325, 331, 341, 355, 360, 365, 378, etc.

[4] Kowalewsky, op. cit., 291.

[5] Cf. 58 f.

[6] "Zur Besiedlung Oberschwabens," *Forschungen und Versuche zur Geschichte des Mittelalters und der Neuzeit, Festschr. f. Dietrich Schäfer*, 1915, 40 ff.

[7] See "Churer Urbar aus der Zeit Ludwigs d. Fr." *Anzeiger für Schweizer Geschichte*, x, 265 ff.

[8] Cf. above, 108.

[9] Cf. Tit. xxii.

We have found these tenants on the rich estates of king and church, and we can trace their activity in the place-names. The royal *Urbar* of Chur, and the records of ecclesiastical estates of the eighth and ninth centuries mentioned by Oechsli and V. Ernst, provide us with examples complementary to the general picture given by the law.

The settlement of the Baiuvari must now be given a somewhat different interpretation from that which is customary. Riezler's views, based on the place-names in *-ing*, are especially important for Bavaria.[1] He considered that they were for the most part clan settlements, and on account of their early date, which he rightly stressed, he attributed them to the Baiuvarian occupation; and accordingly put forward the theory that this occupation took the form of clan settlements,[2] and that the oldest of these were made largely in villages composed chiefly of small free landowners with equal rights. In the present state of research into place-names [3] there can be hardly any doubt that this interpretation of names in *-ing* is much too narrow and one-sided.[4] Moreover, quite apart from the controversial derivation of these place-names, economic history provides us with a series of objections to Riezler's theory. Riezler himself had to confess that *-ing* places are chiefly larger villages only in one part of Bavaria, the west of Upper Bavaria, in the Baar and in Hegau. On the contrary, in eastern Upper Bavaria, in most of Lower Bavaria, and in the country above the Enns, there are more isolated homesteads and hamlets than villages.[5] Riezler could draw no conclusions from this important fact, for he has no convincing explanation of it to offer.

There is one decisive proof, to which too little attention has hitherto been paid. The same source which mentions the noble clans, and which is still older than the Freising charters or any other Bavarian records, namely the *Lex Baiuvariorum*, recognizes the extensive rights possessed by the ordinary freeman in the disposal of land.[6] In connection with two notable passages in the *Lex Alamannorum* (Tit. lxxxvii) and *Lex Baiuvariorum* (xii, 8) dealing with the lawsuits of the *genealogiae* or *commarcani* v. Inama Sternegg had already correctly observed that this cannot always have been a question of common ownership by the clan or mark, because "in all these laws the fact of individual ownership in land is otherwise sufficiently attested".[7] The fact that a *vicus* was named after a family did not necessarily presuppose the common ownership of all the clans,[8] and the *commarcani* (*calasnei*) were not joint owners but only boundary-neighbours, as appears from the context.[9] The clauses in the Code dealing with the legal strife of *genealogiae*, however, do not necessarily mean that two whole clans were the principals in the boundary dispute, but rather that members of two clans were quarrelling with one another.[10] A very obvious illustration of this theory is actually given in the case of Erching, mentioned in the Freising charters.[11]

Legal history has recently again emphasized the fact that the Baiuvari were

[1] "Die Ortsnamen der Münchener Gegend.," *Oberbayerisches Archiv.*, xliv, 33 ff., 1887.
[2] See Germ. edit., I^2, 269.
[3] Cf. p. 106.
[4] Cf. Doeberl, *Entwicklungsgesch. Bayerns*, I^2, 39 f. (1908); I^2, 42 (1916).
[5] *SB.*, 1909, 17. Cf. Germ. edit. I^2, 270 ff.
[6] Tit. i, 1; cf. also Dahn, *Könige*, ix, 2, 360 ff.
[7] *DWG.*, I, 99 = I^2, 134.
[8] Dahn, op. cit., ii, 80, note 5.
[9] Op. cit., 180, note 9. Cf. also § 5.
[10] *Könige*, ix, 353.
[11] *Quell. u. Erörterungen*, new edit., 4, note 5 (750).

not organized according to hundreds in their new settlements. There is also a dearth of place-names in *-ing* in other parts of Bavaria, especially in the Holletau. Riezler attempts to help himself, by making use of the hypothesis that the entry of the Baiuvari was effected from the east, and " that the existing clan groups were already provided with land, when the wave of immigration reached the north-western corner of Bavaria." [1] If, however, the Baiuvari came in from the east and first settled themselves on the land above the Enns, we can hardly assume that the village settlement alone was the original one. For there in the east, places in *-ing* are sometimes isolated homesteads and not always large nucleated villages.[2]

Thus from several directions contradictions and difficulties appear which tell against the interpretation of place-names ending in *-ing* as clan settlements, especially in Bavaria. To-day, archæology has found a completely new basis for the explanation of early settlement. F. Weber noticed that in Upper Bavaria most of the long barrows (*Reihengräber*) were found in *-ing* places.[3] He also drew attention to the remarkable coincidence between the area in which these places occur and that of Roman settlement,[4] and Riezler himself emphasized the fact that they are often found along the old Roman roads.[5] Moreover, they are absent in precisely those districts (such as the Holletau) in which there are no traces of Roman occupation, no long barrows, and no signs of cultivation high up the mountain side (*Hochäcker*). From this Weber concluded that to begin with the immigrants remained in the districts which had been under cultivation in pre-Roman and Roman times.[6] Thus the full significance of Riezler's apt observation that places ending in *-ing* have a definite connection with the nature of the land, is clear. We find them where the land of the village is wide spread and suitable for corn-growing. They disappear where the arable ends or is scanty, where forest and pasture are predominant, in fact where settlements with other names are found.[7]

Thus these important observations support one another. The place-names ending in *-ing* do actually belong to the older settlement, and bear striking witness to the continuity of settlement from pre-Roman and Roman times down to the Bavarian period. This makes the hypothesis of settlement by clans improbable. Most of these settlements cannot have been new foundations, but were an addition to something already in existence.[8] But if the occupation took place, not on a basis of equal rights but *secundum dignationem* (Tacitus, *German.* c. 26),[9] it is very unlikely that the best lands would be left to the clans of freemen, for they would undoubtedly be claimed by the military leaders and princes.[10] Riezler himself admits that the single homestead (*Einzeldorf*) existed from the earliest times in Bavaria, side by side with the village[11]; indeed, he later acknowledged that where people had become accustomed to this form of place-name, owing to the many family names in *-ing*, the suffix might also be used to denote the descendants of a single settler.[12] It has even been argued from the statistical dissemination of single

[1] Riezler, op. cit., 21.
[2] G. K. Schiffman, *Das Land ob. d. Enns*, 547 (1922), and my review in *Arch. f. Sozialwiss.*, 1923.
[3] *Beitr. z. Anthropol. u. Urgesch. Bayerns*, xiv, 145. Similarly K. Schumacher has proved for West Germany, especially Hunsrück and the Eifel, that place-names in *-ing* occur chiefly in the districts of the Saar and Sauer, where long barrows are frequent.
[4] Ibid., 143. Also recently S. Riezler, *SB. d. Bayer. Akad.*, 1920, xvi, 37.
[5] *SB.*, 1909, 15. [6] Op. cit., 155. [7] Cf. *SB.*, 1909, 7.
[8] Cf. above, 63 f. [9] Cf. above, 35 f.
[10] Cf. above, 64. My disproof of the clan-settlement theory is therefore not as incomprehensible as Riezler thinks. " Die Landnahme der Baiuvaren," *SB. d. bayer. Akad.*, 1920, xvi, 72.
[11] *SB.*, 1909, 43. [12] Ibid., 18.

homesteads to-day, and the numerical superiority of these and the hamlets, that when they first occupied the land the Baiuvari showed a preference for the homestead system.[1] It is impossible to deny a certain importance to this evidence. In the mountainous part of Bavaria and in the hilly zone, this form of settlement must have commended itself, owing to the natural lie of the land. But we must be very cautious in drawing conclusions from the types of settlement which exist to-day. To begin with, it has been proved for other parts of Germany, that countless single homesteads are of later date, partly produced by the breaking up of original villages, of whose existence we have historical proof; this is especially the case in Westphalia.[2] Secondly, in Bavaria itself there must have been an important movement of colonization during the Frankish period, in the eighth and ninth centuries, which, as O. Bethge has actually shown,[3] must have gone out from the older centres of settlement. In Bavaria, the place-names indicating orientation, and the distribution of the places in *-ham* and *-heim* among names of the *-ing* and other types, are clear tokens of this later colonization. Moreover, the Lex contains statements about *coloni* and settlers (*accola*), especially those of the church.[4] A great number of the existing single homesteads certainly belong to this time, or to an even later date, about the tenth to the twelfth centuries. But it is certain that isolated homesteads also existed in the pre-Bavarian period, nor were they to be found in the Tirol alone. Archæological excavation has provided countless proofs of this,[5] and it is also supported by the extension of the Alpine type of economy at that time, which presupposes isolated homesteads. Its *termini technici* are chiefly of Roman origin.[6]

On the whole I believe, therefore, that the great number of single homesteads in the district settled by the Baiuvari is not due to a tribal idiosyncracy, introduced there by their occupation. We must not underestimate the influence of seigneurial land-ownership, which was prevalent from the very beginning, not only in the north and north-west of the country, but also in the southern foothills of the Alps. Moreover, it must not be forgotten that great districts of Bavaria were already thickly settled by the Romans, who were perfectly familiar with the system of great estates.[7] I assume that the Baiuvari themselves, at the time when they settled in these regions and on the Vindelician plateau, were no longer a republic of free peasants with equal rights, but that the monarchical form of government which had long existed among them had brought about great social differences. It should be remembered that these Baiuvari were composed of tribes (Marcomanni, Quadi, Naristi, Suevi of the Danube), who were known to the Romans as especially brave and warlike. The wars of the Marcomanni kept Rome busy from Marbodius to Marcus Aurelius. There is direct proof that Marbodius had set up an important military organization in his kingdom. The military leaders and the chiefs of the Gaus must not only have gained rich lands for themselves, but must have divided them at once among their warlike followers and their subordinates, the nobility. But this involves the development of seigneurial land-

[1] Reindl., "Dörfer, Weiler, and Einzelhöfe," in *Südbayern. Mitteil. d. geograph. Ges. München*, I (1904–6); cf. also Döberl, op. cit., I^2, 42 (1916). See Germ. edit., I^2, 277.

[2] See below, 124. [3] Op. cit., 82 ff.

[4] *MG. LL.*, iii, 278; Tit. i, 13, *de colonis vel servis ecclesie.*

[5] See Germ. edit., I^2, 278, note 393.

[6] Cf. J. Jung, *Römer und Romanen in den Donauländern*, 2nd edit., 166 ff. (1887). Wopfner, *Zeitschr. d. D. u. ö. A.-V.*, li, 49, note 43, shows that cattle were bred in the mountains as early as the Roman period.

[7] See Germ. edit., I^2, 279 f.

ownership, which was further promoted by the fact that the Baiuvari early adopted Christianity, and, indeed, brought it into the land with them. Thus the great estate appears in the Baiuvarian Law as a familiar phenomenon, which had obviously existed for some time: here may be found the services of the *coloni* to the *casa dominica*, the lord's house (Tit. xiii), and here also the settler (*accola*), likewise bound by predial services (Tit. xiii, MG., ll. iii., 279, note 71). These latter were the pioneers by whom the estate was extended; they settled on the farthest edges of its territory and reclaimed new arable land from the waste.[1] Bavarian colonization certainly shows no preponderance of settlement by clans of free owners, but must have proceeded at least as frequently by means of seigneurial estates. There may, perhaps, have been a large number of freemen, who farmed part of their property themselves and handed over other parts of it to be farmed by others. They were both landlord and peasant in one person.[2] Both economic types, the landlord and the free peasant, existed at the same time and mingled with one another, and thus the further development which we can trace in Frankish records was made possible. Excavations and papyrology teach us that similar conditions already existed in the late Roman period.

To the north of the Bavarian settlements, at the time of their occupation of the Vindelician plateau, there stretched the kingdom of the Thuringians. In the earlier histories it was taken for granted that Thuringia was chiefly marsh and forest "in the first centuries of German occupation". In these districts, which were never settled by the Romans, forest and uncultivated land was supposed to form the main part of the whole Mark, which was taken possession of by the associations. Later excavations of prehistoric and early historic sites[3] have, however, shown that Thuringia was thickly settled even in prehistoric times.[4] Research into place-names and geographical investigation have added the fact[5] that between the old forest boundary and the boundary of the fenland, which was once more extensive, there is a strip of land of varying breadth in which no trace of earlier forest can be found.[6] It coincides, more or less, with the stretches of alluvium and of the neighbouring diluvium, and with the belts of loess in the valleys. Even at the beginning of the historic period this zone was not only open but fit for cultivation.[7] Some place-names on this unforested land have very old forms (e.g. Artern, Wiehe, Sulza, Gotha, etc.). From the earliest times the advantageous geographical position occupied by these places in respect of lines of communication and passes was naturally important.

At the beginning of the Christian era the Hermunduri, as eastern neighbours of the Chatti, settled in the land south of Harz and Finne, and east of the Werra to the Erzgebirge, and thence southwards to the Danube, where, according to Tacitus, they traded actively with the Romans. The numerous place-names

[1] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, 1, 249 ff. = 1^2, 273.

[2] Cf. also my work, *Die Wirtschaftsentwicklung d. Karoling. Zeit.*, 1, 291 f. = 1^2, 314 f.

[3] Cf. Götze-Höfer-Zschiesche, *Die vor- und frühgeschichtlichen Altertümer Thüringens*, 1909; also Zschiesche, *Beitr. z. Vorgesch. Thüringens, Mitteil. d. Ver. f. Gesch. u. Altk. von Erfurt*, 13, and *ders. d. vorgeschicht Erfurt u.s. Umgebung*, 1904, Mannus, Suppl. vol., ii (1911), 282.

[4] Joh. Müller, "Frankenkolonisation auf dem Eichsfelde," *Forschg. zur thüring. sächs. Gesch.*, ii, 7 (1911).

[5] Cf. O. Schlüter, *Die Siedlungen im nordöstl. Thüringen*, 1903, and Schatte, *Die thüring. Siedlungsnamen*, 1903.

[6] Cf. L. Gerbing, "Die frühere Ausdehnung des Waldes in Südwestthüringen," *Mitteil. d. geogr. Ges. zu Jena*, 24 (1906).

[7] O. Schlüter, op. cit., 159.

ending in *-stedt* are attributed to this earlier period of settlement, which lasted until about A.D. 300,[1] so that we may assume a fairly equal, though widely-scattered, settlement on mainly unforested land, even in the first centuries of this era. A further immigration of German tribes then came from the North. The Angeli, who were settled on the Middle Elbe as far as the Harz and the Oker, and their neighbours, the Warni, turned in large numbers towards central Germany. The Angeli settled in the region of the Unstrut and gave their name to a Gau there (Engilin). The Warni settled between the Saal and the Mulde (Werenofeld near Bernburg). They also settled on Thuringian territory at the same time as the Suevi, though apart from them, and naturally preferred the fertile and flat parts of the country. The date of this immigration is uncertain.[2] The main type of settlement is the so-called *Haufendorf* or nucleated village,[3] whose character and field-plan point to the fact that the settlement had existed for a long time. The long-strung-out villages (*Waldhufendörfer* or *Reihendörfer*) of the Thuringerwald are probably of later origin.[4] There is little chronological certainty about the settlement by Saxons who came in from the north-west. Did it happen before 531 ? Are the place-names ending in *-buttel* due to them ? [5] The similarity of their legal Codes, pointing as it does to a close connection between Thuringians and Saxons, might date from the later period, since both belong to the age of Charles the Great.

At any rate, Thuringia in the fifth century was rejoicing in a golden age and was able to maintain political independence under its own kings until 531. Numerous sites and remains excavated are attributed to this time.[6] Then the kingdom succumbed before the advance of the Franks, who were supported by the Saxons in the decisive battle. The settlement of the land was pushed still farther by the victorious Franks. Not only did they to some extent settle here themselves, but they also used other tribes for purposes of colonization (place-names in *-dorf*),[7] whose clearings pushed beyond the old woodland boundary, into the primeval forest, which must still have been very extensive.[8] Thus the district from the Unstrut to the Ohre and Oker was partly opened up, through North Swabia, Friesia, and Hessen (Schwabengan, Friesenfeld, Hassegau).[9]

A very intensive colonization must have taken place, especially in western Thuringia, judging from the place-names and from the numerous royal estates, which first occur in the sources from the eighth century onwards.[10] This Frankish colonization must certainly belong in part to the later (eighth and ninth) centuries.[11] Meanwhile new migrations into Thuringia took place. When the Merovingian

[1] Grössler, " Die Besiedelung der Gaue Friesenfeld und Hassegau," *Zeitschr. d. Harzver. f. Gesch. u. Altertumskde.*, viii, 94 (1875), and O. Schlüter, op. cit., 146.

[2] See Germ. edit. i^2, 284.

[3] Cf. Meitzen, *Siedelung und Agrarwesen*, 1, 423 f. (Anl. 39, 40).

[4] Meitzen, op. cit., ii, 465 f., and also Rottstädt, *Besiedelung und Wirtschaftsverfassung des Thüringer Waldes*, i.e. S. Schmoilers *Staats-u. sozialwiss. Forschungen*, clxxix (1914), 13.

[5] Schatte, op. cit., 33 f. Edw. Schröder, *Zeitschr. Harzvereines*, xli, 82, thinks they denote a Frisian immigration.

[6] See Germ. edit., i^2, 285.

[7] Grössler, op. cit., viii, 107; O. Schlüter, op. cit., 189, and Schatte, op. cit., 25 f.; Wütschke, *Beitr. zur Siedlungskunde d. nördl. Subherz. Hügellandes*, 23.

[8] Cf. Rottstädt, op. cit., 11 ff.

[9] Cf. H. Grössler, op. cit., *Zeitschr. d. Harzvereines f. Gesch. u. Altertumskde.*, viii, 92 ff., and vol. XI (1875–1878). Also Köhler, *Dialektforschungen im Braunschweig. Magazin*, 1905, 102.

[10] See Germ. edit., i^2, 286 f.

[11] Cf. Rübel, *Die Franken*, 334 ff., who rightly points out that much Frankish royal property must have been created before the eighth century in Thuringia.

king Sigibert was defeated on the Elbe in his second war against the Avars in 562, those of the Thuringians who were between the Elbe and the Saale retreated before the onrush of their enemies, the Avars and Slavs. Then many Saxons, who had probably settled here after the fall of the Thuringian kingdom, moved away in order to conquer Italy and Alboin, king of the Lombards (568). They are supposed later to have asked King Sigebert for their earlier dwelling-places and to have received them; but they had first to win them in hard fighting from the Semnones, who had settled there meanwhile. In 594 the inhabitants of the Werenofeld rebelled against the Franks, and were quelled with much bloodshed. Then, in the seventh century, this district was occupied by the Slavs, pressing forward from the east under Samo. There was now great fighting against them, and King Dagobert, in 632, undertook a campaign from Mainz to Thuringia, after he had made sure of support from the Saxons to the north. Thus it is probable that the Thuringian district of North Swabia, Friesengau, and Hassegau, later (about 700) became dependent on the Saxons in return for protection against the Slavs. The first to win this district back for the Frankish kingdom was the Arnolfing Pippin, Mayor of the Palace, in 748.

According to *Lex Angliorum et Werinorum*, which originated here, though we have it only in a Carolingian redaction (*c.* 802–3), there were very considerable differences of rank among the Anglo-Warni. There is a nobility whose wergeld is three times the value of that of the common freemen, who in his turn is valued at twice the rate of the freed-man (half-free). Individual property in land seems to be fully developed.[1] The free man had the right to grant his inheritance to anyone he chose (c. 54).[2] Only male descendants had the right of inheritance in the alod, so that if there were no sons the nearest male relative of the father was the heir (c. 26). The woman could have only movable property (*Gerade*). It is noteworthy that here, too, it is forbidden to sell freemen *extra patriam* (c. 40). From these decrees we may assume that at an early time considerable differences had appeared in the conditions of ownership. At any rate, the great seigneurial estate had already attained considerable importance as is indicated by the social differentiation of the nobility, the class of freedmen, and the sale of freemen. The ease with which the individual freeman could dispose independently of his inheritance explains the extensive subdivision of land-ownership, which is peculiar to the field division of the national German open field villages. The oldest charters and land-books (*Urbare*) of the richly endowed monasteries of Fulda,[3] Lorsch,[4] and Hersfeld,[5] which show widely scattered possessions,[6] bear witness to this. The existence of these conditions in central Germany is especially important, for there can be no question of the influence of the Roman system here, and German peculiarities are therefore all the more obvious.

Similiar hypotheses may also be applied to the Saxons. The various German peoples who came gradually to be included under this name, spread from the

[1] Cf. c. 50.
[2] *MG.*, LL., iii, 138.
[3] Cf. Dronke, *Tradit. et Antiqu. Fuldenses* (1844), and Stengel, E., *UB. des Klosters Fulda*, i, 1 (1913).
[4] *Cod. Lauresham dipl.*, 3 vols., 1768 ff.
[5] *Breviar. Lulli*, ed. Landau, *Zeitschr. d. Ver. f. hess. Gesch.*, 10; also Edw. Schröder, *Mitteil. d. Instit.*, vols. XVIII and XX.
[6] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, 1, 223 ff., esp. 227, note 4 = 1^2, 246, esp. 250, note 2.

Cimbrian peninsula and the Lower Elbe along the North Sea over the district of the Weser. Thence, in the first centuries of the Christian era, they undertook predatory raids westwards and also spread southwards to the Harz. They forced the Franks back from Flanders and Brabant, and already in the fourth century they were settling in northern Gaul and so came into contact with the Romans. Together with the Franks, in 531, they conquered the Thuringian kingdom, and thus obtained the northern part of Thuringia as far as the Unstrut. Some of them went to Britain, and founded several kingdoms there.

The area of their settlements was extensive and the forms of their colonization varied according to the natural conditions of the soil. There are no early accounts of the Saxons from which direct information on this matter can be derived, and our picture has, therefore, to be founded on indirect and *a posteriori* conclusions drawn from later accounts belonging to the Frankish period, and from the modern field and village plans. An attempt has been made to throw light on the subject from two different sides. Both theories proceed from Westphalia and are based on conditions there. In the second half of the eighteenth century, J. J. Möser regarded the conditions of peasant agriculture prevailing in his home as a direct survival of early German conditions, and, writing as he did at the time of the liberation of the serfs, thought that the Germans settled side by side in free, well-to-do peasant communities. Meitzen, on the other hand, thought that the single homesteads of Westphalia were the type of settlement peculiar to the Celts; each of these homesteads, he thought, was essentially surrounded by the lands belonging to it, and this property took the form of enclosures (*Kämpen*), i.e. square or round plots, each of which was surrounded by hedges or ditches. The fact that the holdings were thus enclosed meant that they lay scattered over the whole area of land belonging to each place.[1] This earlier Celtic settlement, he thought, is maintained to the present day in Westphalia, for the Germans for the most part adopted it unchanged.[2] It is obvious that there is some agreement here with Möser's point of view. Both scholars assume a continuity from the first settlement to modern times.

Meitzen's assumptions, some of which have been adopted without criticism and often copied, do not stand close examination. Quite apart from the inner contradictions of his argument, the elements of which it is composed will no longer hold water; Henning's detailed criticism of his work[3] showed that what appear to be single homesteads are often later subdivisions of village-settlements which have been broken up.[4] His examples are the more noteworthy because they are taken from Schleswig-Holstein and Danish territory, which were the early tribal lands of the Saxons. Not only does he thus demonstrate the uncertainty of continuity, but he also points out that Meitzen's Celtic hypothesis is itself untenable, since it is incorrect that single homesteads were *the* Celtic system of settlement.[5] Moreover, archæological evidence (cemeteries and other excavations) leads us to conclude that nucleated settlements existed in Westphalia and among the Saxons, as for example in Beckum.[6] Outside Westphalia old

[1] Op. cit., I, 50. [2] Ibid., ii, 296.

[3] *Anzeiger f. deutsches Altertum u. deutsche Lit.* (43 vols.), xxv, 1899 (3 August).

[4] Op. cit., 227.

[5] Ibid., 228. Cf. also G. F. Knapp, *Grundherrschaft und Rittergut* (1897), 117 ff., and Flach, *L'origine historique de l'habitation et des lieux habités en France*, 1899, and Vinogradoff, *The Growth of the Manor*, 1905, 91, note 20.

[6] *Zeitschr. f. vaterl. Gesch. u. Altertumskde.*, iii, 5, Münster (1865). Cf. *Corr.-Bl. d. Anthropol. Ges.*, 1890, p. 151, 154.

Saxon village settlements have been found near Sievern, not far from the so-called Pippinsburg (north of Geestemünde),[1] and in the neighbourhood of Lehrte.[2] Finally, the derivation of the Saxon peasant-house from the old Celtic family house, which Meitzen used to support his theory, must also be given up as untenable.[3]

H. Jellinghaus, an excellent scholar of Westphalian conditions, showed that in a number of districts in Westphalia old nucleated villages occur, and are in some places actually in the majority; and that in some cases the original form of those peasant groups, which are called *villae* in historical sources of the twelfth to the fourteenth centuries, still appears as a group or row of peasant homesteads adjoining one another. The estates of *ministeriales*, which are later than the peasant homesteads, lie singly. "Most of the single homesteads of to-day are those of old mark-cotters."[4] Research into Westphalian place-names [5] has confirmed the theory that places ending in *-dorf* are as a rule the oldest settlements. In this connection another phenomenon also deserves close consideration. Of about eight hundred place-names in *-dorf*, three-quarters are formed with proper names; the rest are compounded with only a few other words.[6] This indicates a considerable extension of seigneurial estates even at that early time. On the other hand, the place-names in *-hagen*, which imply a limited and particular district, and are the nearest approach to Meitzen's single homesteads, are recognized to be later formations appearing from the eleventh-century onwards.[7] Here we must take into account the fact, which has been proved in the case of the neighbouring Frisians,[8] that the conditions of the eighteenth century as J. Möser saw them, are partly at least the product of later changes [9]; all the more so, because the common freedom (or "honour") of the Westphalian peasants, so much emphasized by Möser and others, is certainly no more a survival from the distant past than it is in Friesland.[10] It should be particularly noted that the oldest sources, whether Land Books (*Urbare*) or land grants give numerous examples of unfree tenants on seigneurial estates; nor do they occur only in archiepiscopal and monastic sources, for we also find them mentioned in lay charters. The process goes so far that, for example in the Werden Landbooks, the surrendered property is reckoned not so much in hufen (*mansi*) as in *familiae*[11]; and grants are made of *lati* (*liti*) [12] as well as of cotters.[13]

To all this may be added the archæological results of the great excavations undertaken during the last few decades. They show that even in pre-Frankish times there were in the Saxon territory not only forts of refuge (*Volksburgen*), but also seats of the nobility, which became key points in the military resistance

[1] Cf. Agahd, *Zeitschr. d. Histor. Ver. f. Nied. Sachsen*, 1907, 130.
[2] Cf. Uhl. u. Schuchhardt, ibid., 365 ff.
[3] Henning, op. cit., 229.
[4] *Briefl. Äuserung an Rübel*, cf. Rübel, *Die Franken*, 450 f.
[5] Jellinghaus, *Die westfäl. Ortsnamen nach ihren Grundwörtern*, 2nd edit., 1902.
[6] Ibid., 15.
[7] Ibid., 38.
[8] See below, 129 f.
[9] Cf. also H. Hanssen, *Agrarhist. Abhandlungen*, 1, 148 f.
[10] See below, 130 f.
[11] Cf. *Rhein. Urbare*, 2, 43 (c. 890); *tradidit B. . . . omnia que ibi habuit, id est tres familias cum rure quo . . . D. tradidit . . . familiam Th. tradidit . . . familium unam in Emnithi tradidit G. duas familias . . . alios duas familias in uno manso.*
[12] Ibid., 44: *Atheluuardi familiam et insuper duos latos.*
[13] Ibid., 38: *In pago Lyri* often.

to the Frankish conquerors.[1] C. Schuchhardt, who is chiefly responsible for this evidence, has, it is true, assumed that the fortified lords' castles (*Herrenhöfe*) in North Germany were first introduced under Charles the Great.[2] I do not think, however, that there is anything against the idea that this, too, was a pre-Carolingian development, such as that which he has assumed elsewhere.[3] Schuchhardt himself remarked that the fortified castle "grew of its own accord on Frankish territory from a Roman foundation".[4] But H. Jellinghaus, observing the coincidence of the frequent place-name *Werl* (fortress) with royal palaces in north-west Germany, acutely argued that the Franks probably changed old Saxon fortresses into palaces,[5] and Agahd remarked that the old Saxon Kransburg (near Midlum) and the rather later Pippinsburg (near Geestemünde), were not destroyed after the Frankish conquest but were used by the invaders.[6]

We can now see the importance of Langewiesche's statements about the πόλεις mentioned by Ptolemy in the second century A.D., even if these were not cities but only large villages. According to his interpretation of these place-names, they lay just on those old lines of communication and sites where prehistoric and early Frankish remains have been found and, above all, where these *Volksburgen* and lords' burgs have been excavated.[7] We may also add the evidence of the finds of coins which have been made in the old Saxon territory,[8] and which prove that as early as the fifth century Saxon nobles or chiefs possessed treasure in the form of numerous gold coins. It is therefore highly significant that some at least of these finds have been made in the very places where those burgs stood, or on roads of communication which were later used again and fortified by the Franks. The place where the great Dortmund treasure was excavated "lies close to the old military road called Hellweg".[9] Hahnenkamp, near Rehme, lies on the old road which ran from the Eresburg on the Diemel (near Obermarsberg) past the Iburg (near Driburg) and the Skidroburg (near Schieder on the Emmer) and then on to Minden and the Porta Westfalica.[10] Thus it was exactly on the line of the old Saxon burgs. The remains at Lengerich were found on a hill called "Wallage" under great landmark-stones.[11] Perhaps this name and place deserve closer attention, if we consider it in connection with the Wahlsburg (south of Scherfede on the Diemel), which, according to Schuchhardt, is a small family castle (*Dynastenburg*).[12] But enough of guess work! One fact is already quite clear; there can be no doubt that at that

[1] Cf. C. Schuchhardts, "Ausgrabungen," in *Atlas vorgeschichtl. Befestigungen in Niedersachsen* chiefly No. vii (1902): "Vorgeschichtl. Herrensitze." Also his essay, "Röm. germ. Forschungen in Nordwestdeutschland," in Hoops's *Reallexikon d. germ. Altertumskde.*, 1, 207 ff., esp. 208.

[2] Op. cit., and Art. "Befestigungswesen" in Hoops's *Reallexikon d. germ. Altertumskde.*, x, 207 f. (1911–13).

[3] See my remarks about the connection between the *Capitulare de villis*, considered one of the "most original creations" of Charles the Great and especially used to prove the existence of Herrenhöfe, and its earlier forerunners in *Wirtschaftsentwicklung d. Karolingerzeit*, 1, 68 ff. = 72, 78 ff.

[4] In Hoops, op. cit., 207.

[5] "Vor- u. frühgeschichtl. Spuren in nordwestdeutschen Orts- u. Flurnamen," *Korr.-Bl. d. Ges.-Ver.*, 1909, Sp. 386.

[6] "Die Sieverner Grabungen und die Sachsenforsch," *Zeitschr. d. histor. Ver. f. Nied-Sachsen*, 1907, 125.

[7] Cf. above, 57 f.

[8] See Germ. edit., i, 296.

[9] Regling, *Der Dortmunder Fund Römischer Goldmunzen*, 1908, op. cit., 8.

[10] Cf. C. Schuchhardt, *Atlas*, vii, 65, note 267.

[11] Fr. Hahn, *Der Fund von Langerich*, (1854), 6.

[12] *Atlas*, op. cit., vii, 63, note 254.

time great "manorial" estates existed in Saxony and were especially developed on the extensive properties of the old Saxon nobility. At any rate there was a differentiation in the conditions of land-ownership.

We get our first clear insight into Saxon conditions in the Frankish period after the subjection of the Saxons by Charles the Great. This undoubtedly caused great changes. A considerable part of the population was killed, many were led away as hostages and scattered through the wide Frankish territory after the Roman fashion.[1] In order to break their tough resistance, fortified places were necessary, so as to facilitate reinforcements. Hence the establishment of new burgs and fortifications and of roads protected by fortified royal residences. Altschieder is recognized as one of these new Frankish foundations, and it has been shown that many buildings which used to be considered as prehistoric or early German, belong to this later time.[2] It is not, of course, to be supposed that there was a complete expropriation of the whole native population, although their obstinate, ever-recurring resistance to their Frankish conquerors must certainly often have led to confiscation of land and loss of freedom. The conquered people often sank into a half-free state and probably sometimes into complete serfdom. Nevertheless, there was certainly a considerable residue of the old Saxon nobility and of the common freemen, two classes which did not wholly coincide.[3] Henceforward the half-free population grew from two sides at once, for not only was there a degradation of classes which had previously been free, but there was also an emancipation of serfs, especially after the church gained a firm footing by the conversion of the heathen Saxons. The scattered position of their new lands, chiefly acquired by individual grants, makes it impossible that every one of these many great estates should have limited its exploitation to *one* demesne farm (*mansus dominicalis*).[4] This does not imply that all freemen personally cultivated their own land. It is certain that parts of it were given out in return for a rent (*census*) to half-free men and serfs to be tilled by them. The beginnings of the later *Meierrecht* were probably to be seen; the Venerable Bede spoke of *villici* in reference to the Saxons of the Continent.[5] On the other hand, freemen are found as tenants on church lands in records such as those of Werden [6] and Corbei.[7] It has already been mentioned that there is evidence of the existence of cotters at this early date.[8] The theory that this class arose later, in consequence of the throwing together of several *Hufen* in order to lease them (*Vermeierung*),[9] is untenable. Much has been written about their origin, and the suggestion has recently been revived that they developed out of the *servi casati*.[10] This may be correct, but Rhamm may also be right in identifying them with the younger sons of the peasants (*Haistalden*?).[11] These explanations do not exclude one another. The cotters can hardly all have been serfs, as the earlier theory supposed.

Day-labourers, the *Insten* in Schleswig-Holstein, may also have been

[1] Cf. above, 48 ff. [2] Cf. C. Schuchhardt, op. cit.

[3] Cf. Wittich, *Grundherrschaft*, 125*: "Allerdings wurden bei der Eroberung nicht nur den nobiles ihre kleinen Grundherrschaften, sondern auch den liberi und Liten ihre Hufen abgenommen."

[4] See my conclusion in *Wirtschaftsentwicklung d. Karoling. Zeit.*, i², 314.

[5] *Hist. Eccles.*, v, 10.

[6] Mühlbacher, *Reg. Imperii*, i², note 1554.

[7] Ibid., Note 294. [8] 294.

[9] Wittich, *Grundherrschaft in Nordwestdeutschland*, 352.

[10] See Germ. edit., i², 299, notes 504, 505.

[11] *Die Grosshufen der Nordgermanen*, 1905, 146, 169.

employed here and there on the demesne or on the peasants' holdings, the forerunners of the *dagewerhte* of the Sachsenspiegel. They cannot have been merely the descendants of the *liti*; for certainly there was much more freedom of movement in the agrarian world than was allowed by the earlier manorial theory. For example, the Carolingian sources show us not only free men, but the men of other lords, as domiciled and paying *cens* upon the Werden domains.[1]

The records tell us nothing in these earlier times of a settlement by families or free communities. There were no free Mark-associations in Westphalia then,[2] and another explanation may be found for what little evidence we have of the importance of family or clan. The *Lex Saxonum* decrees that a free man who is commended to a noble, and who is obliged by genuine necessity to dispose of his inherited land, must offer it first to his relatives; but this cannot be taken as evidence of the survival of an earlier family-ownership. For, as the decrees which follow show, it is a question not of a right of counter-claim but of a right of pre-emption, apparently regulated by social and political considerations. From the standpoint of the time in which the Saxon Law was drawn up, and of the interests of the Frankish state, which must have been taken into account, it was a sensible proceeding to keep the class of freemen in working order and to secure the economic basis of their existence as long as possible. To arrive at a correct understanding of the matter we must compare the decree made shortly before, by which the surrender of hereditary property is forbidden if the lawful heir is thereby disinherited, unless it be granted to the king or to the church (it is plain enough which interests predominate!). Such surrender is permitted only in case of starvation and if the grantor is supported by the receiver of the property. The chief aim here is obviously to guarantee the minimum of material existence, and the limitation does not, therefore, apply to the disposal of *mancipia*.

Conditions in Schleswig-Holstein, especially in Dithmarschen, are often considered to-day to show distinct traces of old German family settlement.[3] Here it is said the free peasants (*Bonden*) had remained from the earliest times and had been able to develop a free peasant agrarian system with community rights in the Mark, while manorialism and serfdom decreased. The earliest settlements are, according to this view, clan villages which were later developed by the *Slachten* (*Geschlechter*, kinsmen) and their subdivision, the *Kluften*. It has recently been remarked by Sering that the *Slachten* were, to some extent at any rate, artificial groups into which strangers could be received, and which were by no means always identical with the clans.[4] The widely admitted similarity and close relationship of these conditions to those in Friesland should warn us to be cautious. In the latter it has been proved that the freedom of the peasants and the resultant agrarian system was a later development, and this must be considered probable in the case of Schleswig-Holstein also, so long as there is no evidence of the continuity of modern conditions from German times. The documentary proofs given above for the existence of the great estate and

[1] Cf. *Rhein. Urbare*, ii, 56.

[2] Cf. Heinrich Schotte, "Studien. z. Gesch. d. Westfähl. Mark und Markgenossenschaft" in *Al. Meister, Münsterisch. Beitrage z. Gesch. Forschg.*, new edit., xvii, 12 and 19.

[3] G. L. v. Maurer, Preface, 289. O. Gierke, *Deutsches Genossenschaftsrecht*, 1, 219. Cf. also Waitz, *VG.*, 1^3, 83, and most recently P. Vinogradoff, *The Cambridge Mediæval History*, II, 633.

[4] Sering, *Erbrecht und Agrarverfassung in Schleswig-Holstein*, 224, "The majority have the character of voluntarily formed societies and brotherhoods."

of widespread serfdom among the Old Saxons, and the contemporary accounts of their military organization, strengthened by numerous campaigns and raids,[1] all point to the fact that in early Saxon times (as among the Anglo-Saxons) an individualistic and seigneurial system existed, and not a system of communism and equal rights.

In north-west Germany the Frisians occupy a peculiar position. Some scholars have thought that among them the old German peasant-cultivation by free and equal settlers survived with especial tenacity throughout the centuries.[2] Even in Roman times they possessed part of the land where they now dwell. But it must be emphasized that in the process of settlement important movements by the Frisians also took place. From their original home round the Zuyder Zee,[3] where Tacitus knew them (*Germania*, 34), they spread gradually to the Ems. In A.D. 12 Drusus brought them under Roman rule, and after taking part in the rebellion of the Batavi (69–70) they continued in a loose dependence on Rome. They did not, however, join in the advance of the Franks and Alemanni against Roman territory in the fourth and fifth centuries; and it has been presumed that they had then spread to the East, after the Chauci had retreated from the northern sea coast.[4] No definite conclusions are possible on account of the lack of documentary evidence for the following centuries. They emerge into the light again with their subjection by the Franks, which took place about the middle of the sixth century,[5] and was at first probably not at all severe. At the end of the seventh century the West Frisians, who had advanced to the islands at the mouth of the Scheldt, were finally subjected by Pippin of Heristal (689). The Middle Frisians were joined to the Frankish kingdom by Charles Martel (734), the East Frisians (who by that time had spread beyond the Oder) by Charles the Great.

The true home of the Frisians was the inaccessible marshland, separated by low stretches of swamp and moor from the high inland Geest (sandy soil). Thus they were well protected on the land side, and it is therefore possible that they settled from the direction of the sea, first of all on the marshland, whence they advanced into the Geest.[6] As regards Frisian types of settlement, it is impossible to say that either isolated homesteads or villages were exclusively the more ancient forms of settlement. From the earliest times there must have been differences, arising from the different types of land available. In Roman times and even earlier, the need for dykes promoted co-operation among many settlers, so that larger village settlements at least cannot have been rare at an early date. This is evident from the *Lex Frisionum* of about A.D. 800.[7] The oldest Landbooks (*Urbare*), especially those of the monastery of Werden, parts of which date back to the ninth century, show that large villages were in existence then. Individual properties are defined, as they are to-day, according to their position in the different parts of the village, which is named as a whole

[1] G. Joh. Hoops, *Waldbäume u. Kulturpflazen im German. Altertum*, 579 ff. and, L. Schmidt, op. cit.

[2] O. Gierke, *Genossenschaftsrecht*, i, 218, and again Meitzen, op. cit., 51, and Inama-Sternegg, *DWG.*, I, 15 = 1^2, 16.

[3] Bremer, *Etnographie d. German. Stämme*, op. cit., iii, 846 ff.

[4] Cf. the article, "Friesen" by R. Much in Hoops, *Reallexikon*, ii, 99 ff. (1913–15).

[5] L. Schmidt, op. cit., 80.

[6] Cf. Th. Siebs, *Z. Gesch. d. english-Fries. Sprache*, i, 9, 1889.

[7] iv, 9; MG. LL., III, 662.

(e.g. Ausser-, Inner-, Vorder-, Hinter- N.).[1] Here, also, as in the *Lex Frisionum*, the place-descriptions *villa* and *vicus* occur as well as *curtis* or *hove*.[2] In these earliest tax-registers we constantly find place-names in *-thorpe* and *-uuic*[3]; also others in *-hem* and *-holta*.

That some of the villages were of considerable size, is proved by the earliest land charters of the monastery of Werden, where on one occasion a twelfth of a villa is given.[4] Scattered possessions were obviously the rule. Lay and ecclesiastical lands are found in the same place, and often intersect one another, because parts of inheritances (*hereditas*)[5] have been given up by the laity to the church. Frequently in charters it is said of the conveyor that the gifts were made *pro acceptione sua*.[6] Sale and purchase and exchange, which is also mentioned,[7] must have given rise to an active land market at an early date, and numerous landowners existed in each village. Each of the properties granted is defined in *pedes* and *virgae*, *perticae*, and even *pollices*.[8] These also serve as a measurement in assessing the rent (*census*) to be levied on each property. The land to be surrendered is also described as *terra x animalium* or *boum*, by which pasture-land is chiefly meant. It is incorrect, however, to argue from this against the existence of *Hufen* or of a system of *Hufen*. In the same very early sources, from which these descriptions are taken, there is also mention of *sortes* and *mansi*.[9] *Hove* also occurs, probably with the same meaning.[10] I believe that the frequent term *virga* must also, like the Anglo-Saxon *virgata*, have had the same meaning.[11] *Uurde* is also found with a similar significance.[12]

Meitzen's theory is that *Hufen* in Friesland are due to a transference of Frankish arrangements which did not become naturalized until Carolingian times,[13] and that the formation of polders which presumably began then, and the regulating of flooded marshes, led to a division into strips, whereas in earlier times the marshland had been divided into irregular enclosures and blocks. This, however, is one of Meitzen's arbitrary statements. There are (as we have pointed out) no records for the preceding period. The terms in which the properties are described, especially *virga*, are evidence against Frankish origin, and coincide with the Anglo-Saxon method of characterization. This block-shaped division of the acreage may also be due to a later division or the rounding off of inheritances. On the other hand, the similarity of the strip system cannot be due only to seigneurial interests, but may be explained in the light of agricultural technique and the existence of good and bad land. The different types of land in the Geest make scattered property necessary, if the

[1] *Rheinische Urbare*, ii, 48: "in exteriori Thirbirgi, in superiori Th."; ibid., 41: "in ultimo Ubinghem, in excellentissimo U.; in maiori Burhem," etc.

[2] Ibid., 48, 42. in *eadem villa*.

[3] Ibid., 48. Tunglasthorpe, 49, 46; in Thorpun, 51; Urielbrandasuuic, 50; Scagasthorpe, Frilingothorpe, Ancoulthorpe, Aldonthorpe, Otesthorpe, etc.

[4] Ibid., 14, note 9.

[5] Ibid., 48, 42: 47, 12, 15: 49, 56.

[6] Ibid., 49, 55: 50, 36.

[7] Ibid., 88, 45. *Commutavit*, 53, § 24; 54, *terra quam emit*.

[8] Ibid., 47, 15.

[9] Ibid., 2, 12, 13 n., 13, and 2, 37^{28}.

[10] Ibid., 48^{34}.

[11] Cf. ibid., 48, 41–4, 56–8; 50, 26 ff., 53, § 24, 54.

[12] Ibid., 50, 10; in Pettinghem 1 *uurdi*; cf. also 47, 14, 15, 16, and Grimm, *Rechtsaltertümer*, 2^4, 65.

[13] Op. cit., 49, f. and 51. Cf. Germ. edit., i^2, 306 ff.

settlers are to have holdings of equal value. The marshlands allow each single fen to be used separately as grassland or ploughland. Moreover, a division of plots thus surrounded by water ditches has technical disadvantages. These field systems and forms of settlement may easily be explained from the sources —on the one hand the completely free divisibility of the land down to the smallest parcels (*pedes*), on the other hand agricultural co-operation against a common danger, and the subordination of the whole arrangement to the common interest. We need not, however, go so far as to assume that the settlement of the marshlands was carried out by free associations, whose chiefs were army captains and leaders of developing communities.[1] It is much more important to stress the dominating role which was already at that early date being taken by the great estates in Friesland.[2] They carried out the settlement side by side and together with the free landowners.[3] This view is supported not only by the evidence of the great ecclesiastical estates, but by the conclusions as to the extent of lay property, which may be inferred from the size of individual gifts by secular landowners to the church.[4]

On the other hand those forms of landed property are lacking, which elsewhere are usually taken as evidence of the settlement of free communities. In Friesland there were no Marks, in the sense of folk-land, at this early date.[5] As a matter of fact, common land, *mene*, *mente*, occurs both in the marsh land and on the Geest. These plots, however, are not the common property of free village communities, but are barren and unproductive tracts of village land,[6] which were left undivided for the common use of the inhabitants, in proportion to the size of their individual holdings and as an appurtenance of the latter. The use and management of this waste was jointly regulated by all the settlers; grazing was controlled by common shepherds for economic reasons, so that some might not be at a disadvantage owing to the exhaustion of the best fodder by a few individuals. The expression *hamrik* or *hemrik* does not imply a common Mark, but simply this "common".

The idea that the early Frisians had almost no tillage but only extensive stock-raising,[7] which has been adduced in support of the theory of communal cultivation, is based on assumptions which are refuted by the passage in Tacitus, in which he says that the Frisians, who had pressed forward to the Lower Rhine in Nero's time, built permanent dwellings at once and began to till the land.[8] Tacitus' further remark, *utque patrium solum exercebant*, shows that this had been the regular practice among them in their homeland.

The distribution of property among the Frisians in these early times was very unequal. According to the Lex Frisionum a nobility appears side by side with the freemen, and there are also half-free *Liti* and unfree men.[9] Charles the Great's summons to the host in 807 calls up grafs and royal vassals, and *caballarii omnes*, while on the other hand only limited duties are laid upon the *pauperiores*, every six of whom had to fit out a seventh man.[10] The *caballarii* are hardly nobles, but perhaps fully free men who were rich enough to take the

[1] Julius Gierke, in O. Gierke's *Unters. z. deutsch. Staats- u. RG.*, 96 ff.
[2] F. Swart, *Zur fries. Agrargesch.* (1910).
[3] Ibid., 184.
[4] See Germ. edit., i², 308.
[5] Meitzen, op. cit., 45.
[6] See Germ. edit., i², 309, notes 570–2.
[7] Jul. Gierke, op. cit., 96.
[8] Tacitus, *Annal.*, xiii, 54.
[9] *Lex Saxon.*, 16, 17, 18, 20, u. 64; *MG. LL.*, V, 54 ff. and 81.
[10] *MG.*, Capit. i, 136, c. 3.

field on horseback.[1] This is evidence of the extensive horse-breeding, which existed there from a very early date, in consequence of the considerable stretches of grazing land.[2] The theory that there was no nobility among the Frisians but that the *nobilis* of the Lex meant the full freemen has been sufficiently disproved.[3]

It has already been mentioned that the Frisians came early into contact with the Romans and their culture. They repeatedly fought with them as neighbours in the first century A.D.; they later provided them with auxiliaries; and as daring traders they came from their settlements at the mouth of the Lower Rhine up the river into Roman territory with their wares. Thus, not only had they ample opportunity to learn Roman ways, but they were the means of carrying these customs back into the interior of Germany.

It was in this manner, then, that the occupation of land by the various German tribes took place on the Continent. I have purposely tried to describe it in detail, in order to give the necessary basis on which to form an opinion as to its results. These were undoubtedly far-reaching; and in this I agree with the opinions of all scholars up to the present time. Roman rule was abolished, and in general the old political order broke down. But this was not true in detail of all private rights. We saw that, just as the so-called age of migration was not a time of savage destruction and complete demolition, even so the wars of conquest and the fighting during the occupation itself did not cause an unvarying devastation along the whole line. In order to understand the results of this great transformation, we must not look at the matter only from the standpoint of the conquered Romans, as it is reflected in contemporary writers, but we must stand apart from it as independent critics, and study the new order to which it actually gave rise. I do not imply that a complete reorganization of society took place at once. This was impossible, above all in the economic and social sphere. But new foundations had been laid for peaceful reconstruction in the conquered territories, which were now safely in the possession of their new rulers. It will be the task of the next chapter to describe those foundations.

[1] These were first named after the *vasalli* in the Capitulary. Perhaps the *omnes* which immediately follows refers to *caballarii*.

[2] See Germ. edit., i, 311, note 585 f.

[3] H. Brunner, "Nobiles und Gemeinfreie d. Karoling. Volksrechte," *Zeitschr. d. Savigny-Stiftg., f. RG.* 19, and "Ständerrecht. Probleme," ibid., vol. xxiii.

[4] For English conditions cf. Germ. edit. i², 311-27.

Chapter V

THE DIVISION OF THE SOIL AND AGRARIAN ECONOMY IN THE LATE ROMAN AND EARLY MEDIEVAL PERIODS

EARLIER scholars, in consequence of their conception of the so-called folk-migration and of the German conquest of the West Roman Empire, found themselves in a position of constraint when they came to describe German material civilization. For if the ancient and lofty civilization of the Romans had succumbed to the destructive inundations of the migration, and if all that Rome stood for had been swept away by the German barbarians during the conquest, the immediate consequence would be an interruption of civilization—a devastation in Voltaire's sense—which necessitated the assumption that afterwards everything would have to be built up again from the beginning. These utterly uncivilized German conquerors would have gradually and painfully to rediscover and work out all that had once existed on the far side of that great burial ground of civilization. This would be true both in the economic and in the social sphere. If the Germans were depicted during the land occupation of the sixth century as free and equal peasants, so far without any political organization and if, therefore, they settled in communities of families, it would seem a plausible theory that their whole agrarian economy rested on associations which had a common right to the settled land, " the Mark," without any private ownership of arable. Within the framework of this picture there was as little room in early German society for the great estate as for a stronger social organization.

Those who promulgated this earlier theory do not seem to have asked themselves seriously how, given these hypotheses, the complete economic isolation, which had logically to be ascribed to this primitive development, could possibly have been overcome in such a short time, and that by barbarians who had so recently shown themselves completely hostile to culture. The expedient by which they sought to support their theory does not give any satisfactory answer to this question. The distinction usually made between the Roman provincial regions (such as Gaul, Spain, and Italy) and the purely German districts, is essentially at variance with the theory itself, which holds that in these Roman provinces the Roman towns and settlements were burnt and destroyed and the population massacred or led away into slavery, while a scanty remnant was reduced to serfdom, and its lands expropriated. It is difficult to believe that uncultured conquerors so quickly lost their savagery under the influence of a few serfs, and that after a single century (only the seventh is left for the purpose) they are in a position to build up what had been so thoroughly overthrown and trampled under foot for at least three (the fourth to the sixth). Indeed, from the sociological point of view, it is impossible to find any plausible reason why these German landowners, living only for war and the chase and never labouring in the fields themselves, should have condescended so quickly to do the despised servile work of their Roman subjects. It was certainly easier to live upon rent than to wrest a scanty livelihood from the soil by their own labour.

But what about the great seigneurial estate (*Grundherrschaft*)? How did it enter into the free peasant republics of the Germans? Its appearance certainly cannot be explained by the arguments commonly adduced to show that it began in the eighth and ninth centuries, especially if the hypotheses are correct concerning the German economic and social organization from which it is supposed to have developed. For the communal rights originally enjoyed by the groups of free settlers or Mark-associates are supposed to have continued through the period when private ownership of arable land began, from about the sixth century onwards. The right of the associates to veto the settlement of strangers made it possible for them to keep away any unwelcome intruder. The rise of the monarchy and the church, both of which collected a rich territorial property, cannot possibly have been the main cause of a new system so important in its consequences. At a time when that system was completely developed, they are obviously striving to support and maintain the small free landowners, and not to destroy them. How was it, then, that the old freedom of German peasants and family groups disappeared so quickly that in the eighth and ninth centuries we can perceive nothing more than a faint reflection of it in the records of the monarchy and the church? The great seigneurial estate is essentially incompatible with everything that we have been told about the peculiar nature of German economic and social organization in that early period. Why should this foreign body, so dangerously infectious, have found an entrance into German civilization, when it had been abolished and destroyed three centuries earlier with the fall of the West Roman Empire?

Thus the theories hitherto held about the development of early medieval civilization will not bear a rational analysis. On the one hand they contradict one another in detail, on the other they do not allow a straightforward synthesis of the historical facts as they are known to-day, but compel us to assume a rapid development by leaps and bounds in order to bridge the gap. *Historia non facit saltus!* All these difficulties and stumbling blocks disappear as soon as we base our further investigation on the two main results of archæological discovery and recent research into settlement, which have been discussed in previous chapters. To begin with, there was no breach of civilization, but a continuity of development, which may be traced everywhere in town and country. Secondly, we have to recognize the conservatism of the new masters, who were not blind destroyers, but old connoisseurs of Roman culture, appreciating it at its full value.

There was, therefore, no interruption of civilization and no catastrophe. Indeed, there was much less devastation than used to be imagined. Such as there was must in part be ascribed to developments under the late Roman Empire itself—the flight of the *coloni* from the land, and the gradual cessation of the movement into the towns, accompanied at the same time by considerable immigration. A great increase of population must have been caused by the influx of Germans into the Roman provinces. Its consequences are striking in places where we have more definite information about the division of the land between Germans and Romans. The soil, which had hitherto belonged to the Romans, was now half, or more than half, settled by Germans. They soon turned to its cultivation, and the new labour now available supplied a lack from which the late Roman period had suffered considerably. Moreover, the actual immigration took place on old cultivated land which was already in occupation. The constructive activity of the new masters did not begin in the desolation of primitive forests, as was once imagined. It

began in exactly the same places where the Romans had laboured before them. The Germans settled beside, and often in the midst of, Romans. They may often have lit their fires on Roman hearths and put their hands to Roman ploughs.

It is therefore necessary, above all, to be clear as to what they found and overcame in these Roman provinces, which were now their home. The main part of the Roman soil on which they settled belonged to great estates and was consequently organized on this basis. It is out of these great Roman estates that the new development takes its start, and we must proceed from conditions which prevailed on them in order to understand the nature of the reconstruction. It will perhaps be best to begin by considering the imperial estates, not only because we know most about the economy of the domain, but because, as has been shown above, early medieval development often began there, and because the royal and ducal estates, and indirectly those of the church, which played a decisive part, were all derived from imperial domains.[1]

From the beginning we must keep in mind the fact that great economic variety already existed within the Empire in Roman, and especially in late Roman, times. This was the case not only in production but also in economic organization. The great estates of the Emperors (*saltus*)[2] were differently organized in east and west; they were, for instance, of greater extent in Africa than in Italy, and were also in more compact blocks. It must be emphasized that large properties, *latifundia*, do not necessarily imply a compact territory, but may include many individual farms (*fundi*)[3] in different districts. Therefore property was not everywhere compact and enclosed, but might be scattered, as was often the case in the Middle Ages.[4]

These Roman *latifundia* were not units of large-scale farming with a centralized economic management operating from one or more points. On the contrary, they are remarkable rather for their decentralization. From Pliny onwards the chief complaint[5] against the *latifundia* was not that they were great estates but that they were converting independent free peasant properties into small dependent leased farms.[6] We can clearly observe the *dualism* which used often to be regarded as peculiar to the German period. Part of the property was managed by the owner, especially the "demesne" which lay round the castle (*castellum*) or the central homestead (*villa*).[7] It consisted of the villa in the narrower sense, i.e. the house and the group of farm-buildings belonging to it, usually surrounded by a wall and a ditch.[8] The demesne land was the best part of the estate, its kernel, so to speak. It was farmed by the *familia*, the farm-slaves of the owner, with an *actor* or *vilicus* as overseer and farm steward.[9] The rest of the property consisted of the more distant and scattered parts, given in parcels or small holdings to *coloni*. They lived in the *vici circa villam* or in farms (*casae*) and owed rent and service to the main farm.[10] We see here clearly the same combination of independent and tenant-farming which is found in the early Middle Ages.

[1] Cf. above, 55 ff.

[2] Cf. M. Weber, *Die röm. Agrargesch. in ihrer Bedeutung f. d. Staats- u. Privatrecht* (1891). Ad. Schulten, *Die röm. Grundherrschaften* (1896), and R. His, *Die Domänen der röm. Kaiserzeit* (1896).

[3] Schulten, op. cit., 20.

[4] The *Vita Severini*, c. 12, gives an example of this in the fifth century.

[5] *Hist. Nat.*, xviii, 7: *latifundia perdidere Italiam.*

[6] Cf. Th. Mommsen, *Die italienische Bodenteilung*, Hermes, xix, 415 ff.

[7] Schulten, op. cit., 53.

[8] For the so-called *Zehenthöfe* in the *Decumatenland* cf. *Bonn. Jahrb.*, lxxix, 64 (1885).

[9] Schulten, op. cit., 93.

[10] Ibid., 100.

Moreover, there is a definite gradation and a considerable development in forms of tenure. Besides leases for a term of years we find the *precarium*, hereditary leases, and leases, on the *métayage* system (*colonia partiaria*). No one familiar with the works of L. Mitteis [1] and Rostovtzeff [2] can possibly hold that the combination of these, together with the evolution of the great seigneurial estate or "manor", is an advantage which Frankish development has over late Roman times. As a matter of fact, continuity of development is especially obvious in the forms of tenure the Roman origin of which has been repeatedly shown.[3]

The similarity between the medieval German and the late Roman economic systems may be seen in even greater detail in the *Lex Manciana*, a general law of the time of the Emperor Vespasian.[4] It regulated the relations of the state to the different holders of state land (*ager publicus*) so far as this was in the hand of private owners or of the Emperor. In it two classes of coloni are seen: those who live on the *fundus* itself (*inquilini*) and those outside it, i.e. peasants who leased a piece of domain land in addition to their own farm. These are the *proximi quique possessores* mentioned by Hyginus [5] and identified by Rostovtzeff with the native population of Africa, which formerly paid dues to the Carthaginians and now in Roman times paid a *stipendium* to the tenant-farmers (*mancipes*).[6] A further distinction was also made. Besides the coloni who had houses of their own, there were others who lived in their lords' houses: *qui villas habent dominicas*.[7] The former were neighbouring landowners who perhaps became coloni by occupying waste and uncultivated land (*subseciva*); the latter were landless peasants settled on the estate, who were gradually placed on the plots which had earlier been cultivated by slaves. We must look closely at this division, for something of the same sort has already been shown in existence in the Germano-Frankish period.[8] The *Lex Manciana* also makes it plain that this development was not due to German influences.[9]

These Roman estates enjoyed a special legal position.[10] They were organized autonomously under special officials (*procuratores*, *actores*) outside the territorium of the *civitas*, and were thus exempt from the general organization of the district. On the great estates of private persons, too, among whom those of senatorial rank were especially prominent, the owner himself, usually an absentee who lived in the city, did not carry on the farming and management; this was taken over by a large tenant or *conductor* who rented the *fundus* as a whole and then gave out single parcels to small tenants, in return for dues and labour services. The procurators appointed over the separate domains had quasi-magisterial power, not merely managing the estates, but levying taxes and mulcting the tenant (*conductor*) if he did not perform his duties; in fact, enjoying a right of punishment and military authority over the *coloni*. They had *coercitio*, the power of compelling obedience to their own commands, and *cognitio*, the right to punish offences against others.

[1] "Z. Gesch. d. Erbpacht im Altertum." *Abhandl. d. sächs. Ges. d. Wiss. phil. histor. Cl.*, xx, 4 (1901).
[2] *Die Staatspacht in d. röm. Kaiserzeit* (1903).
[3] See Germ. edit., i, 333 f.
[4] See ibid., i, 334, note 19.
[5] See Rudorff, *Röm. Feldmesser*, i, 116, 22.
[6] *Studien z. Gesch. d. röm. Kolonats* (1910), 316.
[7] Ibid., 342.
[8] See my *Wirtschaftsentwicklung d. Karolingerzeit*, ii, 93 f.
[9] Germ. edit., i², 335.
[10] See the comprehensive description in Beaudouin, *Les grands domaines*, in *Histor. VJ.* xxi, 543 ff., and ibid., xxii (1897 and 1898).

No private territorial lord wielded this quasi-magisterial power of the *procuratores* of the imperial domains. Actually, however, a position gradually developed which was at least similar in practice. The general tenant of the saltus (*conductor*) was, it is true, subject to the supervision of the intendant (*procurator*) who had to settle quarrels between him and the *coloni*. The collision between the economic power of the conductor and the quasi-magisterial power of the *procurator* was usually felt by the *coloni*, while these two, whose social status was the same, soon came to an agreement and played into one another's hands. With the connivance of the *procurator*, the *conductors* often encroached on the rights of others, and were especially fond of arbitrarily increasing the labour services of the *coloni* in respect of the demesne land which was in their own private management. This was especially frequent in the provinces, above all in Africa about which we have more details. The position of the *conductors* was strengthened by the fact that they could become hereditary tenants on imperial land. As *emphyteuticarii possessores* they became quasi-lords and are sometimes actually called *domini*.

Towards the end of the Roman period, and especially after the time of Constantine, a development took place which had important consequences. The subordination of the inhabitants of the domains to regular jurisdiction gradually gives way to a system of judicial administration, whereby the individual is tried in the presence of a domain official. The usual judge must in all cases apply to him for surrender of the guilty party; according to a decree of Valentinian he may not himself enter the domain to use compulsion on the people dwelling there (*immunitas*). Already, in the fourth century, a seigneurial-patrimonial jurisdiction is developing. It was at first limited to the domains, but the more economic dependence increased and the connection between *conductor* and *procurator* took the course indicated above, the sooner could the private territorial lords (who significantly were already calling themselves *potentes*) usurp similar rights by way of patronage (*patrocinium*).[1] This led to that transformation of small free peasants into dependent *coloni* which Bishop Salvian of Marseilles describes in such drastic terms in the fifth century.[2] In order to escape annoyance from those who were economically strong, the small free farmers put themselves under the protection of the great territorial lords, against whose economic competition they could not in any case hold their own for any length of time. Here, too, the well-known economic and social phenomena of the Frankish period are the direct continuation of these late Roman developments, and are not due to the rise of great seigneurial estates for the first time under the Franks.[3]

Together with the development of these great estates we also find the growth of the labour dues for which the *coloni* were liable.[4] They had to render both manual and ploughing services (*opera et iuga*). At first the natural needs of rural economy may have caused this exaction of extra help at certain times when farm work cannot be postponed (sowing and reaping, the harvest, the first ploughing), since the people of the demesne farm itself would not be sufficient for these purposes, and reinforcements would be necessary. This would explain the fact that these labour dues were at first relatively small (six to twelve days a year).

[1] Beaudouin, op. cit., xxii, 112 ff.
[2] *De gubernat. Dei.*, v, 8, 38; MG. AA., 1, 62.
[3] Beaudouin, op. cit., xxii, 733.
[4] Cf. H. Gummerus, "Die Fronden der Kolonen," *Öfversigt af Finska Vetenskaps-Societetens Förhandlingar*, l, 3 (1907–8).

The *scriptores rei rusticae* show that free paid workers were also employed for the same purpose.[1] This was still the custom at the beginning of the fourth century, as Diocletian's tax-decree of A.D. 301 shows. But such wage-earners cannot have been obtainable everywhere in the necessary numbers, especially in the more distant regions, far from any town. Moreover, it was the endeavour of the great estates in later Roman times to be independent of the neighbouring towns,[2] and this desire may have led them more and more to call upon their own people for the necessary services. Another motive may also have influenced them, as we learn from the accounts of Columella. When the harvests were not good, the *coloni* used to ask for remission of their dues in kind (*partes agrariae*). Columella therefore recommends that emphasis should be laid rather on the demand for labour services (*opera*), as the *coloni* could not ask for any remission of these.[3] In my opinion the distinction made between *opus* and *pensiones* indicates personal labour dues. As, however, the lords are advised to claim the "*avarius*", the author is probably thinking only of an abnormal exaction of the usual dues of individual *coloni*, and the reason given by Columella would seem to show that this exaction was intended for the demesne land, and not for the tenant holdings of the peasants themselves.[4] In fact, even in the second and third centuries, the *coloni* felt oppressed by the immoderate extension of labour services, so that Roman law had to prohibit it and to determine the dues (*Leges Manciana* and *Hadriana*).[5]

In addition, the *coloni* had to render building-services, which seem to have been considerable,[6] while the hospitality and maintenance dues, which were exacted by officials and confidential messengers of the imperial court on their journeys, were also felt to be oppressive, as we see from inscriptions in Asia Minor.[7] Carrying services, which were connected with the above, were a heavy burden on the tenants of the great estates. The *angariae* which appeared as early as the period of Persian rule became more important from the fourth century in the Roman Empire. Animals and men were requisitioned for the transport of Imperial goods, of officials and soldiers; and carrying services were increasingly demanded for the expedition of goods and men.[8] Finally, it must be noted that labour dues were also exacted for the upkeep of roads and ways, which was undertaken in the different Gaus by the *magistri pagorum*. Sometimes definite sections (*spatia*) were allotted to individuals with adjacent holdings, who had to keep them in order at their own expense.[9] In general, it is clear that not only do the characteristics of the later German period[10] derive from the previous Roman and even from the Hellenistic age, but that the application of labour dues exacted by public authority is likewise very much the same.

We are thus well informed as to conditions on the great estates of late Roman times; but this is not the case as regards the free landowners who worked their

[1] Gummerus, "Der röm. Gutsbetrieb." *Klio, Beitr. z. alten Gesch.*, Suppl. v, 1906, 42.
[2] Cf. M. Weber, op. cit., 241, 274.
[3] For the controversy over this see Germ. edit., i², 338.
[4] i, 7, 1: *avarius opus exigat quam pensiones, quoniam et minus id offendit, et tamen in universum magis prodest.*
[5] Cf. Th. Mommsen, *Dekret d. Commodus f. d. Saltus Burunitanus*, Hermes, xv, 385 ff., esp. 406 (1880).
[6] Cf. Schulten, *Grundherrschaften*, 49 ff., and Gummerus, *Fronden*, op. cit., 35.
[7] Gummerus, ibid., 53 ff.
[8] Cf. Rostovtzeff, "Angariæ," *Klio*, vi, 249 ff. (1906), and Schulten, "Libello dei coloni d'un demanio imperiale in Asia," *Mitt. d. kais. deutsch. Archäol. Institt. Röm Abteil.*, xiii, 221 ff. (1898).
[9] Cf. Siculi Flacci, *de condicione agrorum*, Rudorff, *Röm. Feldmesser*, i, 168 f. 8.
[10] G. Waitz, *Deutsche* VG., ii², 598 ff.

own farms. We hear of them chiefly at the moment when they cease to be free and enter into relationship with the territorial lords. Yet a more definite idea of their position may be arrived at if we picture to ourselves the way in which the Roman land and soil were divided, as the detailed records in the writings of Roman surveyors enable us to do.[1] Each of the districts given by the state into private ownership, the "Mark" or *ager*, seems to have been divided (*divisio*) into equal or equally valuable parcels, or collections of parcels, which were assigned by the magistrates to individual owners (*adsignatio*) and entered on a map (*forma, aes*) in the manner of a land register.[2]

The division of the soil itself was effected in two different ways, both based on two main lines drawn with a field-diopter (*groma*), *decumanus* (east–west) and *cardo* (north–south), crossing at right-angles. The *ager centuriatus*, which originally included a hundred arable lots, each of two days' work (*iugera*), was divided by drawing parallels to the main lines, thus cutting up the whole Mark into quadrates or right-angled blocks. It was also called *ager limitatus* after the boundary-lines (*limites*) between the *centuriae*. In this type of measurement pieces of land were left over (*ager extracensus, loca relicta*) such as that which lay between the *centuriae* and the outside boundary of the Mark, and also the waste-land (*silvestria ac palustria*) which was also called *subseciva*. Both these types formed the *ager arcifinius*, the unmeasured land. It was irregularly bounded by natural features (trees, rivers, mountains, roads, etc.). A second method was to divide up the land into *scamna* (banks) and *strigas* (strips); by deviations from the *decumanus* line, right-angled pieces were made by lines drawn lengthways or crosswise, which were called *strigae* if their main length lay north–south, and *scamna* if they ran east–west. Within the *centuriae*, which were actually more important for the *coloni*, a further division took place by means of the creation of single lots (*sortes*); these the individual settler received (perhaps originally by the drawing of lots ?) and they were therefore called *acceptae*.

Ad. Schulten assumed that there was a fundamental difference between Roman and German land-division. He thought that in the former a compact piece of land (*fundus*) was always given, whereas in the latter a sub-division of the single lot into countless separate parcels in different open fields (*Gewanne*) was characteristic.[3] But there are technical reasons against this view. It must have often happened that the measure of the *acceptae* of a *conternatio* or *decuria* did not go evenly into one *centuria*[4] but would have to be assigned to several *centuriae*. In that case the names of the settlers were written on the land-map in those *centuriae* where they received land, and beside the name the extent of the single parcels was written in yokes.[5] This alone makes it probable that even in the Roman system of land division holdings were scattered and, therefore, open fields existed. There is also other evidence of this. Fronto, in his *Controversiis*, discusses a case in which a *controversia de modo in agro adsignato* arises. And here he assumes that the individual has received portions of his lot (*sors*) not only in different parts of the open fields of one *centuria*, but also in a neighbouring *centuria*.[6] The *sors*,

[1] Cf. Rudorff, *Die Schriften d. röm. Feldmesser*, ii (1848–1851), also C. Thulins in *Bibl. Teubner: Corpus agrimensorum Roman.* (1913).
[2] Cf. Special Bibliography, Germ. edit., i², 340, note 46.
[3] "Flurteilung und Territorien," *Bonn Jhb.* ciii, 15 (1898).
[4] Cf. Rudorff, op. cit., ii, 369.
[5] Cf. Hyginus, *de limitibus constituendis bei Rudorff*, i, 204.
[6] *Corpus Agrimensor. Roman.*, 5, and Rudorff, i, 13.

therefore, consisted in such cases of a number of *partes* which did not make a compact whole, but were scattered in different places. Another passage in Siculus Flaccus actually says so in so many words: "*Praeterea et in multis regionibus comperimus quosdam possessores non continuas habere terras, sed particulas quasdam in diversis locis, intervenientibus complurium possessionibus, propter quod etiam complures vicinales viae sint, ut unusquisque possit ad particulas suas iure pervenire.*" [1] The very emphasis of the need for special ways of access leaves no doubt that we have here intermixed lands in different open fields.

From the same source we learn the reasons for the development of such conditions. Even in Roman times it appears that the normal situation, in which each person would receive one *sors* or *accepta*, could not be permanently maintained. Not only were such units divided among several persons, but several of them would often be received by one single *colonus*.[2] Moreover, alterations were made by exchange,[3] purchase and sale, so that certain parts of an *accepta* might pass into other hands.[4] And, finally, divisions of property arose, owing to the fact that individual veterans might share their possessions among their sons in three or four quotas.[5] Thus considerable inequalities in land-ownership had already arisen in the case of smaller landowners, both within and without the great estates, and the *Hufe* or hide was now by no means the normal average holding of a single settler.

The *centuriae* were divided from one another by *limites*, which were not merely boundaries but also field paths.[6] They had a certain breadth, and might not be ploughed or fenced but had to be left free. The *limites* were distinct from the *viae* [7] which were either *publicae* or *viae vicinales*. The latter led off the public roads or sometimes back to them again.[8] They served chiefly to give the single owner a means of access to his different strips in the arable field. *Termini* was the name applied, among others, to the boundary-stones which served as marks to distinguish the boundaries of the properties.[9] Private paths were not looked upon as the boundaries of the arable lots.[10] If a *sors* were divided among the sons of a veteran, boundaries were drawn within it, which were called *termini comportionales*.[11] The boundary of the whole piece of land was called *finis*. It is uncertain whether it consisted of a line, or of a strip of definite breadth (5 feet).[12] This may have been differently arranged according to the natural conditions of the land. At any rate, economic needs had to be taken into account in the lay-out of the paths, especially from the point of view of accessibility and the possibility of turning the plough.[13] Trees and stones on the boundary (*in confinio*) were regarded as part of the strips in which they lay. If they were removed, they were legally independent property, in the joint ownership of the boundary-neighbours.[14] Quarrels between neighbours (*vicini*) must naturally have often arisen over the

[1] *Corpus Agrimens.*, 116.
[2] Ibid., 125.
[3] Ibid.
[4] Cf. Hyginus in Rudorff, i, 131.
[5] *Corpus Agrimens.*, 59: Si veteranus filiis suis unam possessionem dividens in tres aut quattuor portiones. . . . (*Agennii Urbici de controversiis Agrorum*, in Rudorff, 1, 71).
[6] Cf. W. Gebert, "Limes," *Bonn Jhb.*, cxix, 163 (1910).
[7] Rudorff, op. cit., *i*, 41. 26.
[8] Siculi Flacci, *De condicione agrorum.*, ibid., 1, 146. 6.
[9] Cf. the *Edictum Theoderici*, c. 104 and 105.
[10] Rudorff, i, 41. 27.
[11] Ibid., 1, 40. 8.
[12] See the article "Finis" in Pauly-Wissowa's *Realencyclopädie* (R. Leonard), vi, 2, 23, 25 (1909).
[13] Cf. Hyginus, *De generibus controversiarum*, in Rudorff. i, 126. 5.
[14] See the article, "Confinium," by R. Leonard in Pauly-Wissowa's *Realencyclopädie*, vii, 871 (1900).

boundaries,[1] and the ploughing-up of boundary-stones was especially severely punished.[2] In quarrels about boundaries the *vicini* had to co-operate in establishing the facts of the case.[3] They were also called upon to check the returns of property for assessment of taxation (*professiones*), and therefore in the cadasters the two nearest neighbours had to be given, as well as the administrative district (Gau-community and *pagus*).[4]

In the measurement of the arable land various standards were used. Of those which were also in use in the Germano-Frankish period, the most important was the *iugerum* (yoke). This, according to Pliny, was the amount which could be ploughed by one yoke of oxen in a day. There was also the *pertica*, a ten-foot rod, and the *arapennis*, a term used for the amount otherwise called *actus* (a square of twelve *perticae*), which was perhaps taken from the Celtic.[5]

The single lots of the settlers (*sortes*, *acceptae*) had to consist mainly of useful land (*ager utilis*), and not only of woods or pasture. However, if the greater part of a man's holding was made up of arable, he had to have a piece of woodland to fill up his lot. Many received woodland directly adjoining their land (*iunctas silvas*), but many also might have it farther off in the mountains, sometimes even on the far side of their fourth neighbour.[6]

The land which was not measured out during the allotment (*subseciva*) was retained by the state,[7] in so far as it was not given away or sold by the original owner. This was also the case with the *loca relicta* and *extraclusa*. If these were useful lands, they were used as common pasture (*compascua*) by the neighbouring settlers.[8] They were also called *communia* because they belonged to all the holdings in common.[9] The right of pasture went with the homesteads and passed to purchasers and legatees. Often more land was available than was given out in the allotment,[10] and what was over was then granted to the nearest owners as *compascua* in common. Woods are also to some extent found in the ownership of several *vicini*, who had the right to fell trees or to graze cattle there.[11] Mountain forests were often miles away from the individual homesteads to which they belonged, and quarrels consequently arose as to which of the intervening homesteads was the owner.[12] The mountain forests on the boundaries of the colonies were frequently not included in the allotment (*relicta*, *extraclusa*), and were often illegally occupied by the nearest settlers and turned into arable land.[13] In many districts rivers were also counted as *subseciva*.[14]

These descriptions, which are chiefly taken from the writings of Roman surveyors, show a considerable similarity between the division of the soil at the Roman period and conditions prevailing at later times. The question now is whether there was a direct connection, and whether continuity of development may be traced here also. The assertion that outside Italy no trace of the Roman division into *centuriae* is to be found[15] can no longer be made to-day. The experts in

[1] Cf. Gebert, op. cit., 165.
[2] Rudorff, op. cit., ii, 243 ff.
[3] Cf. Rudorff, i, 281, 5–10.
[4] See the Forma censualis of Augustus in Rudorff, op. cit., ii, 312, note 232. Cf. also Hyginus in Rudorff, i, 202, 15, and also Schulten, "Röm. Flurkarten," *Hermes*, xxxiii, 554.
[5] Cf. Rudorff, op. cit., ii, 279 ff., and Schulten, "Die Landgemeinden im röm. Reich." *Philologus*, liii, 633.
[6] Hyginus, *De limitibus constituendis*, Rudorff, i, 203 f.
[7] Rudorff, op. cit., ii, 391 ff.
[8] Rudorff, ii, 395.
[9] Frontinus, *de controversiis*, Rudorff, op. cit., i, 42.
[10] Hyginus, op. cit., i, 201.
[11] Siculus Flaccus, *de condic. agror.*, Rudorff, i, 152.
[12] Frontinus, *de controversiis*.
[13] Frontin, ibid.
[14] Siculus Flaccus, *de condic. agror.*, Rudorff, i, 157. 18
[15] Vinogradoff, *The Growth of the Manor*, 55 (1905).

Roman gromatics quite plainly contradict it, for they do not base their statements on Italy or the Orient alone, but refer directly to the provinces in general, and particularly to those which were settled by Germans. Thus, among the special cases which they mention, we find Pannonia, and the provinces of Dalmatia and Germania.[1] The form of measurement of the *ager divisus et adsignatus* is typical of the colonate[2]; it was used especially for allotments to veterans, which is particularly important, because numerous Germans thus received arable plots for their military services.[3] This evidence tallies with the results of archæological research, which has brought to light the actual remains of such conditions in Germany itself. In the Wetterau at Friedberg, the chief town of Upper Hessen, very clear traces of the Roman division into *centuriae* can still be seen. The *limites* crossing at right-angles are partly retained in the lay-out of the roads and paths, and partly to be found as a stony substratum in the arable land itself.[4] Friedberg, which was settled in the Bronze age,[5] comes from a Roman settlement, a permanent camp, the walls of which (*porta decumana*) have partially survived to this day. Moreover, fragments of that very Roman measuring instrument (*groma*) by means of which the division of the soil was carried out, have been dug up on the *Limes* in the neighbourhood of Pfünz (near Eichstädt) in Bavaria.[6]

Furthermore, in recent years an inscription has been found in the Rhine territory at Cologne, which is unmistakable evidence of the division of the village land into *scamna*, i.e. into crop-fields (*Gewanne*). In this the *possessores ex vico Lucretio* are more specifically described as "*scamno primo*", which would have no meaning unless there were a distinction between the crop-fields.[7] We have another inscription from Obrigheim in the Neckar valley[8] recording the foundation by a Roman landowner of a temple of Mercury with four *centuriae* (= 800 *iugera*). Thus in this district, too, there must have been a division of the soil with exact measurements,[9] similar to that in Friedberg in the Wetterau. K. Schumacher, who agreed with this theory, further pointed out that in the districts where the *villae rusticae* have been fairly completely excavated, they occur at surprisingly equal intervals; as, for example, on the Bergstrasse between Heppenheim and Heidelberg, from Rohrbach to Stettfeld, between Durlach and Malsch, or along the Leimbach and Kraichbach.[10] This, also, seems to indicate that the ground was definitely measured out. Finally, mention must be made of an inscription from Lorraine, put up by the *coloni Aperienses* who were performing a dedication. It does not actually mention the division of the land, but serves as evidence of seigneurial organization[11] and, judging by what we know about this in general,[12] it must have been based on a measurement of the land. This tallies with the fact

[1] Cf. Hyginus, op. cit., 84; Dalmatia (ibid., 85), Germania in Tungris (ibid., 86).
[2] Cf. Hyginus, *de condic. agror.*
[3] Cf. above, 50 ff.
[4] Schulten, *Bonn Jhb.*, ciii, 39.
[5] K. Schumacher, *Siedelungs- und Kulturgesch. d. Rheinlande*, 1, 72.
[6] Cf. Schöne, "Das Visierinstrument der röm. Feldmesser," *Jb. d. kais. Deutsch. Archälog. Instit.*, xvi, 127 ff. (1901).
[7] See Germ. edit., i², 348.
[8] CIL, xiii, 6488. Also Barthel, *Bonn Jhb.*, cxx, 49, note 19.
[9] For details see Germ. edit., i², 348 f.
[10] "Zur Besiedelungsgesch. d. rechtsseitigen Rheintales zwischen Basel u. Mainz," *Festschr. z. Feier d. 50 jahr. Bestehens d. röm. germ. Zentralmuseums zu Mainz*, 1902, 35.
[11] Cf. Keune, "Röm. Weihinschrift aus Weidesheim-Kalhausen," *Jhb. d. Ges. f. lothring. Gesch. u. Altertumskde.*, xxvi, 461 ff. (1915).
[12] Cf. above, 138.

that it was found in a place which was settled even in prehistoric times, viz. Kalhausen, on the railway line between Saargemünd and Strasburg, near Herbitzheim, where dedicatory inscriptions have also been excavated.[1]

Later, K. Schumacher made a comprehensive examination of village boundaries, and pointed out numerous cases in the Rhineland and in Hessen[2] which show a direct connection with Roman conditions (such as the coincidence of Roman roads and boundaries), and in which traces of Roman *centuriae* are still visible in the compact block-formation.[3] These settlements, which belong to the very old pre-Roman and Roman periods, were already compact *vici* in pre-German times and continued during the German period, as we see from their connection with Merovingian cemeteries (long barrows), etc. It may be added that the oldest extant mark-surveys belong to these districts, e.g. Heppenheim and Michelstadt in the Odenwald.[4] Both the region round Worms, and Pfeddersheim, Horchheim, Pfiffligheim, Heppenheim, Osthofen, and Westhofen are remarkable for fairly regular rectangular block divisions of the soil with the settlement in the middle, which are quite different from the more numerous irregularly bounded types in the rest of Rhenish Hessen.[5]

It is important to note that the latest discovery of private charters of the Carolingian period appears to give direct proof of that coincidence between the Roman *fundus* and the German village Mark which Schumacher assumed.[6]

As a result of these archæological discoveries, it can hardly be doubted to-day that in certain places the Roman division and survey of the ground survived and was adopted in the German period. Not only are the intermingled strips on different crop-fields of ancient origin, but there is, here and there, a striking coincidence between the property units, the *Hufen*. Even the description is the same, *sortes*, an expression which in early German times (as has already been proved from documentary evidence)[7] no longer denoted partition by lot, but described the share of land held by the individual villager. That was also the case even in late Roman times. The terms used by the *Scriptores rei rusticae*, who were competent authorities in this matter, deserve emphasis. They use the expression *sortiri* in a general and weakened sense, meaning to "obtain", "receive", "attain", without any reference to drawing lots. Columella applies it directly to inanimate objects, e.g. to the arable soil which takes on different colours.[8] At the beginning of the sixth century the *Vita Severini* of Eugippius uses *sortiri* in the sense of "attain", when speaking of the dwelling-places which were acquired by the provincials brought from Noricum to Italy.[9]

Similarly in the chancery of Charles the Great in 811, the word *sortiri* is used for "attain" in the corroboration formula of the well-known award deciding the quarrel between Salzburg and Aquileia,[10] where otherwise *obtinere* would be used. The same use is also found in the Salzburg poems of the beginning of the

[1] Keune, op. cit., 466 f.

[2] "Die Dorfgemarkung als frühgeschichtliche Bodenurkunde," *Germania*, v, 2 ff. (1921), and also *Mainzer Zschr. Beitr. z. Siedlungs- u. Kulturgesch. Rheinhessens*, xv–xvi (1921), 14.

[3] See above, 138 f.

[4] Cf. O. Beilage in *Vjschr. f. Soz. u. WG.*, xii, 71 ff. (1914).

[5] Schumacher, *Mainzer Zschr.*, xv–xvi, 14.

[6] Cf. R. Durrer, "Ein Fund von rätischen Privaturkunden aus karoling. Zeit," *Festgabe J. G. Meyer v. Knonau*, 1913, 46 f.

[7] Cf. Waitz, *VG.*, ii, 1[3], 288, note 4.

[8] *De re rustica*, ii, 2, 17.

[9] Chap. 44: MG. AA., i, 29.

[10] MG. D. Car., 211.

ninth century.[1] The Lex Rib. uses the term *sors* for *Hufe*, or the private land of the individual,[2] and it is significant that in the same Title *sortiri* means "attain".[3] The same use of the term is found among the Frisians [4] and other German tribes,[5] from the earliest times down to the Carolingian period.

As for the German *Hufe*, *Hoba*, various meanings have been ascribed to it by earlier scholars, but Waitz proved that they were incorrect and himself suggested one which has since been universally adopted. *Hoba* is connected with *haben* (English "have") and means that which one has or possesses. One cannot help noticing the coincidence with the Roman term *accepta*, an expression which Waitz does not appear to have known; for when he speaks of the use of *aratrum* for *Hufe*, he refers to a passage in the Fulda Landgrants which gives the Roman form *accepta*. He does not understand it and so he emends it to *exceptis*, but he acknowledges at the same time that the meaning is not clear to him.[6] As a matter of fact, it makes good sense if we explain it by the old Roman term *accepta*.[7] It is possible that there is a close connection between *accepta* and *hoba*, brought about by the allocation of lots to German settlers in the late Roman period. The earliest Frankish form is *houa*, the original meaning of which was a "piece" and is therefore the same as the Latin *sors*.[8] Moreover, in Schleswig to-day the word *houwe* or *hawe* has the same meaning.[9]

We must compare the terms for the same thing, found among the other German tribes. They are quite different in meaning from *Hufe*, *Hoba*, for they mean dwelling, dwelling place, or the settled condition, the home; for example, Norse *bol*, Anglo-Saxon *hide* (*hiwisc*). This set of words corresponds to the other Latin term *mansus* (from *manere*) which approaches the matter from a different angle. Thus this very difference in meaning of *Hufe*, *Hoba*, from the usual German expressions may be used as a negative proof of its connection with the Latin *accepta*. It is true that an independent origin might also be assumed for this word, as is warranted by the nature of the thing designated. It should be observed in this connection that in western Frankish records we also find the term *bonnarium* which is of Celtic origin (*bona* = boundary) and also means a limited portion.[10]

It is the similarity in the material content of the conception *Hufe* which suggests that there is a connection with Roman conditions. Not only do we find both in the Roman *accepta* and in the German *Hufe* a conglomeration of several individual plots, lying in some cases, in different *Gewanne*, but the accessories and appurtenances are also extraordinarily characteristic, i.e. the share in the undivided waste-land, forest and pasture, and water. Is this odd coincidence only a chance one?

Here also, however, a quite unexpected light has been shed on the economic history of Germany and of the German peoples by the recent discoveries of

[1] MG. Poet. Lat. ii, 645: x, 25.
[2] MG. LL., v, 252: tit. lx, 5.
[3] Tit. lx, 7; op. cit., 252.
[4] See the Landbooks of the monastery of Werden, edit. Kötzschke, *Rhein. Urbare*, ii, 13, note 13.
[5] See the discussion of terms for the *Hufe* in Landau, *Territorien*, 4 ff.
[6] *Die altdeutsche Hufe*, in *Abhandl. d. kgl. Ges. d. Wiss. z. Göttingen*, vi (1854), 144.
[7] Cf. Dronke, Cod. dipl. Fuldens, 156, note 323 (a. 816): *in villa que dicitur Munrichestat, quod constat ex suis propriis aratris acceptis servorum suorum bonis.* It should be noted that in the list of tithes given to the Abbot, both before and after, the *servi* are included, so that *exceptis* would give the opposite sense.
[8] Cf. Schiller-Lübben, *Mittelniederdeutsches Wörterbuch*.
[9] Cf. G. Hanssen, "Agrarhistor." *Abh.*, ii, 109, note 1.
[10] See the art. "Bonnarium" in Ducange; and Landau, *Territorien*, 4 ff.

classical archæology. In Greco-Roman agrarian history the notorious ἐπιβολή (Lat. *iunctio*) has been well known for a long time. This meant that in order to raise as high a tax as possible, the small tenants were forced by the great Greek or Roman landowners to take over, in addition to their arable lot, an extra plot—a piece of neighbouring waste land, and to cultivate this and pay taxes for it (*peraequatio*).[1] I would draw attention to the fact that by close observation of this widely extended custom in the late Roman period, a whole set of technical terms occuring in early Frankish sources may now for the first time be clearly understood. So far, these have been passed over carelessly, and hardly any attempt has been made to explain them. In the early Frankish collections of formulae, which served as models in drawing up charters, the formulae for gifts and land-grants contain definite information about the accessories or appurtenances, whenever the land which is being handed over is described more closely. Here, in the so-called appurtenance formula, we often find the phrase *iunctis vel subiunctis*, as, for example, in the seventh century Angers formulary [2]; and it is interesting to trace the further development of these terms. In the formulary of Marculf we find in the same passage *adiunctis* beside *adiecencis* and *appendiciis*.[3] The same influence may also be traced in the Salian formulary; here the phrase is *saltis et subiunctis*.[4] In the *Form. Visigothicae* the transition is also clear: *adiunctionibus ad memoratum locum pertinentibus*.[5]

It is noteworthy that these technical terms are very numerous in the Angers formulary, which shows other traces of strong Roman influence.[6] Then they gradually give place to other phrases in the collections of formulae; later on we find in their stead *adiacentiis vel appendiciis* [7]; and *communiis* is also repeatedly used in the same way.[8] The same is true of the royal charters of the early Carolingian period, especially in the case of West Frankish grantees, as for example *iunctis vel subiunctis* in a grant to St. Denis [9]; elsewhere it is *saltibus atque subiunctis*.[10] In a charter of Carloman in 770, concerning the property of Prüm, the text of which contains some very early forms, the appurtenance formula has *adiunctis* as well as *adiacentis*.[11] In the territory of East German (i.e. Bavarian) law [12] and likewise in Swabia [13] *marca atque* (*ad*) *iacencia* is used in the same connection.

Thus we see clearly the connection between the earliest Frankish sources and the late Roman system, and also the transition to later forms. We now know what is meant by *iunctis et subiunctis*, i.e. the appurtenance of a corresponding lot in the still undivided *ager inutilis*, the neighbouring waste-land. Hence the expressions *adiacentia*, otherwise *communia*, for the same thing. These, too, are used by the Roman surveyors, with the term *compascua*, defined by Siculus Flaccus as forest and uncultivated land—places where the right of pasture is held by the nearest

[1] Cf. Schulten, *Grundherrschaften*, 127; L. Mitteis, *Z. Gesch. d. Erbpacht im Altertum*, op. cit., 54 f., and Rostovtzeff, *Kolonat*, op. cit., 392 ff.
[2] Cf. MG. FF., ed. Zeumer (LL. sect. v), p. 5, 5.
[3] Ibid., 75, 10.
[4] Ibid., 241, 13.
[5] Ibid., 580, 11.
[6] Cf. H. Brunner, *DRG.*, 1^2, 577.
[7] Cf. for example Form. Marculfi, op. cit., 89, 16; Form. Turon., ibid., 137, 19; 144, 26; Form. Angiens., ibid., 354, 19.
[8] Cf. Form. Sal. Lindenbrog., ibid., 267, 2; 279, 24.
[9] MG. D. Car., 1 (752).
[10] D. Car., 7 (754).
[11] MG. D. Car., 51.
[12] Cf. the Mondseer Landgrants. UB. d. L. ob. d. Enns, ii, 16, notes 25, 26; 18, note 29; 20, note 31; 44, note 74; 49, note 83.
[13] MG. FF., 402, 8; 403, 6.

neighbours, i.e. those who own the adjacent property.[1] In this connection we may also note the phrase *cultis et incultis* which is constantly found in the appurtenance-formulae of early medieval documents [2] and obviously refers to the *ager inutilis*.

S. Riezler has recently pointed out that Roman influence may also be seen in the word *wadriscapis* which is likewise found in appurtenance-formulae and of which scholars used to try to give a different explanation; *capa* signifies water-supply.[3] If we remember that the waters belonged to the Roman *subseciva* [4] as well as to the German Mark, then this word, which has hitherto been misunderstood, is seen in its full meaning, especially in connection with those formulae-phrases which refer to the *iunctis*. The word was brought to Bavaria from the lands of the Salian law under Archbishop Arno who was at one time abbot there.[5] Thus there are no fundamental differences between the ἐπιβολή and the German Mark [6]; in both cases the aim is the same, the bringing of waste land under cultivation. Moreover, in Germany taxation was assessed according to the extent of a man's share in the use of the Mark.[7] Naturally the administration of taxation in general was very different in the two cases, as was also the position of the great seigneurial estates in relation to the government.

These statements also define my position in regard to the question, which has been much ventilated recently, namely the origin of the *Hufe* system in Germany. We are here dealing with something very ancient, which had certainly developed before Roman times among the Greeks, Egyptians, and Celts. It is an institution deeply rooted in the very nature of agrarian economy, and is bound to appear everywhere. In my opinion the Germans took it from the Romans, just as the Romans had taken it from the Greeks and Celts. This is shown by the fact that a Hufe system proper is found in the earliest times among those German tribes which settled on Roman soil (Franks, Alemanni, Baiuvari, Thuringians). The Frisians may not have added it so early, and it was not introduced among the Saxons until after the Frankish conquest. But among the North German peoples (Anglo-Saxons, Danes, Swedes) we find quite a different system, that of "great" *Hufen* (*Grosshufen*), known to us only from very late sources (eleventh or even twelfth century).[8] It is impossible to derive any certain knowledge about the earlier period from them, more especially as they are entirely seigneurial in origin. The theory that we have here a new Frankish creation[9] is as untenable as the theory that the *Hufe* was a purely seigneurial arrangement, the tributary unit of a dependent peasantry.[10]

At all events it is true[11] that the *Hufen* (about which we hear for the first time in Carolingian and mainly seigneurial records) do not justify us in drawing *a*

[1] *Corpus Agrimens. Rom.*, 121.

[2] Cf. the Mondseer Landgrants. UB. d. L. ob. d. Enns, 1, 9, note 13; 21, note 33; 45, note 76, etc. MG. D. Car., 7 (754). MG. FF., 460, 3, 4 (Passau).

[3] *Sitz.-Ber. d. bayer. Akad.*, 1920, xvi, 9, note 1. It seems to me that the explanation *wadriscap*, i.e. scapium, is also possible, especially as in one formula the explanatory variant *pareis* is found. MG. FF., 267. Lindenbrog No. 1.

[4] See above, 140.

[5] Cf. R. Schröder, "Arno Erzbisch. v. Salzburg u. das Urkundenwesen seiner Zeit." *N. Heidelberg*, JB. ii, 165 ff., esp. 168.

[6] See German edit., i², 357.

[7] L. G. L. v. Maurer, *Gesch. d. Markenverfassung in Deutschland*, 186.

[8] Cf. K. Rhamm, *Die Grosshufen der Nordgermanen*, 31, and 309 (1905).

[9] Rübel, *Die Franken*, 159 ff. and *passim*.

[10] G. Caro, "Die Hufe." *Deutsche. Gesch. Bll.* (A. Tille), iv, 257 ff.

[11] Ibid., 267.

posteriori conclusions concerning the nature of land-ownership among the free peasantry in earlier days, or equality of property among the ancient Germans. Originally the expression *mansus* was not synonymous with *Hufe* (*hoba*) and it has recently been proved that in the old folk-settlements of Flanders [1] and the Lower Rhine [2] the component parts of the holding were by no means always intermingled or scattered over several *Gewanne*. The equality of the *Hufe* was largely brought about by seigneurial action, nor does it date from the Carolingian period only, for the great seigneurial estate is much older.

Closely connected with the *Hufe* was the Mark. All scholars are more or less in agreement as regards the interconnection of the two, however different their views may be as to their meaning and origin, for there is as little consensus of opinion about the conception of the Mark as about that of the *Hufe*. Ambiguous as it is the term at any rate includes the undivided land, forest, pasture, waste-land, and water; therefore, under the influence of certain sociological concepts, the idea arose that the Mark was the residue of a communal form of land-ownership which had existed everywhere, and out of which private ownership had gradually developed. According to this view, therefore, the Mark would be the primary, and the *Hufe* the secondary, institution.[3]

But a solution of the great riddle of German economic history may be reached in another way. The original meaning of Mark, *marca*, as has been emphatically asserted by the most reliable students of the sources, J. Grimm,[4] Landau,[5] and Waitz,[6] is "boundary", "boundary land", and therefore "district". It may be pointed out that other German terms for the same thing contain the idea of a boundary; as, for example, Low-German Westphalian *brink* (= border),[7] the North German *börde*,[8] Ang.-Sax. *mearce* (*gemaerun*).[9] Mention may also be made of *Scara* (Ger. *Schar*) which means a share in undivided land, a slice or piece as it were. This basic meaning of "Mark", which is parallel to the Latin *margo*, was retained. In the Ripuarian Law (Tit. lx, 4, 5),[10] in the Alemannic Law (Tit. xlvi, xlvii), and in the Bavarian Law (Tit. xiii, 9) [11] *marca* is equivalent to terminus, i.e. boundary; and the *Lex Burgund.* (Tit. xxxviii, 5) speaks thus of "intra terminum villae". The same meaning is found in charters, such as those of St. Gall, where the phrase *in fine vel marca* continually occurs.[12] The boundary common to two adjoining neighbours (or the boundary-strip or boundary territory) is called *confinium* or *commarca* [13]; and this not only in Bavaria.[14] We have here, therefore, a similar usage to that found among the Roman surveyors (*conlimitanei*).[15]

[1] Cf. Pirenne, "Liberté et propriété en Flandre du VII[e] au XI[e] siècle," *Bulletin de l'Académie royale de Belgique classe des lettres*, 1911, 504 ff.

[2] Cf. Th. Ilgen, in *Westd. Zeitschr.*, xxix, 1 ff.; xxxii, 88 ff.

[3] Besides earlier works see Meitzen, op. cit., 1, 76, and K. Weller, "Die Besiedelung des Alemannenlandes," *Württemb. Vierteljahrshefte*, vii, 336 ff. (1898).

[4] *Deutsche Rechtsalterthümer*, 2nd edit., 496.

[5] *Die Territorien*, 112 f.

[6] *Die altdeutsche Hufe*, op. cit., 211.

[7] Cf. Schiller-Lübben, *mnd. Wörterbuch.*

[8] Cf. Landau, *Territorien*, 114; Maurer, Introd. to op. cit. 66 f.

[9] See the "Laws of King Withraed", 38 (695–6), in *Liebermann*, op. cit., 13; Ine, 10, ibid., 95.

[10] MG. LL., v, 351 ff.; *infra terminationem*; *extra marcha.*

[11] MG. LL., iii, 316: *foras terminum . . . hoc est foras marca.*

[12] Cf. Wartmann, *UB. v. St. Gallen*, 1, note 154, 205, 283, 301, etc.; also *MG. D. Car.*, 13 (760), f. Fulda.

[13] Cf. Grimm, *Grenzaltertümer*, 3, and Gutmann, F., *Die soziale Gliederung der Bayern*, 32.

[14] Cf. *Mittelrhein. UB.*, 1, 113 (867).

[15] Cf. Rudorff, op. cit., 1, 343, 19; also ii, 234 f.

Marca and *limes* also often mean much the same. Both describe not only the boundary itself but also the boundary-land, the boundary-district, boundary-strip, or boundary-edge.[1] The Roman term *limites* survived in medieval documents.[2] We find in the records of St. Gall the analogous phrase " cum legitimis marchis".[3] This phrase occurs in an appurtenance-formula, and in other records, too, we find " marcas vel fines " mentioned among the appurtenances of land of which a grant was being made.[4]

The Wendish frontier district is already called *marca Vinedorum* by Fredegarius.[5] The east Mark, founded by Charles the Great after the conquest of the Avars, is called *limes Avaricus* or *terminus Avaricus*, and later *marca orientalis* or *Baioariae*.[6] In 893 a royal charter refers to the boundary or Mark-grafs (*margraves*) who had authority there as *comites terminales*.[7] Finally, mention may be made of a use of the word Mark which has not hitherto been observed. In the Alamannic [8] and Bavarian Laws,[9] the penalty for injury to the *marczan* (or *marchzand*) is discussed. Closer observation of the very full details given in the Alemannic Law leaves no doubt that what is meant is the eye tooth (in German *Echzahn*, literally corner tooth), i.e. here, too, *mark* means corner, boundary, or border.

On this basis we can, I think, arrive at an understanding of how the original conception of the Mark (= boundary) was combined with that of the common Mark (= *communia*, *compascua*), and why the two became fused. Grimm had already observed that in early times Mark also meant forest, especially in the North.[10] We know from Cæsar that the Germans thought it important to secure their settlements by surrounding and shutting them off by boundaries of forest and waste-land.[11] If this were so it may easily be understood that the content of the boundary soon came to be synonymous with the boundary, the Mark, itself.[12] The same was the case with the individual village settlements ; the outer ring, the boundary of the village land, was forest and waste, a rule already adopted by the Roman surveyors.[13] To this we must add that in early Frankish charters making grants of land the *inculta* as well as the *terra culta* is expressly mentioned.[14] It belongs to the village and all the landowners have a share in it. At this point attention should be drawn to the kinds of land which composed the mark among the different German tribes, or, rather, in the different areas of German settlement, which are so varied from a geographical and morphological point of view. In Frisia a significant distinction is made; on the *Geest* (sandy soil) the Mark is " de gemene dreske ",[15] but on the marshland it is the low-lying, marshy, constantly flooded part. In the Westphalian-Saxon territory it is the *Vöhden* and *Esche*, i.e. a water-logged clay soil[16] and level sandy land. In Middle Germany, especially in Hessen, and in the north, it sometimes means the forests ; in Upper Germany it means the

[1] Cf. Gebert, "Limes." *Bonn. Jahrb.*, cxix, 192 f., esp. 198; J. Grimm, RA., note 2, 496.
[2] Niebuhr., *Röm. Gesch.*, ii, 558. [3] Wartmann, *UB.*, note 643.
[4] MG. D. Car., 13 (760), *für Fulda*. [5] MG. ss. rer. Merov., ii, 157, 15.
[6] Cf. E. Dümmler, "D. südöstl. Marken d. frank. Reiches unter d. Karolingern." *Arch. f. österr. Gesch.*, x, 12 ff.
[7] *UB. d. L. ob. d. Enns*, ii, 39 (Mühlbacher, *Regesta Imp.*, 1, note 1841).
[8] Tit. lx, 15; MG. LL. iii, 65. [9] Tit. iv, 16; MG. LL. iii, 292.
[10] *Deutsche Grenzaltertümer*, 3; cf. also Kemble, *The Saxons in England*.
[11] *De bello Gallico*, vi, 23. [12] Cf. also Grimm, RA.[2], 497, 4.
[13] See above, 140. [14] See above, 145.
[15] See Germ. edit., i[2], 309, note 571.
[16] Concerning the Vöhden and the rotation of crops carried on there, cf. K. Rübel, " Agrarisches vom Hellweg und aus der Grafschaft Mark," *Beitr. z. Gesch. Dortmunds u. d. Grafschaft Mark*, xi, 231 ff. (1902).

Alps, and in Scandinavia often waste land. The actual content of the Mark is, therefore, by no means universally the same, but one thing is common to it; everywhere it is land which is unfertile or produces very little. Does not this show a striking similarity to the Roman *ager inutilis* or the *subseciva*? It must be emphasized that there is absolutely no evidence that fertile arable land ever formed the content of the Mark in the sense of the *communia*, i.e. undivided common property; for we are here concerned only with the narrower meaning, not with the wider conception of the Mark as the whole land of the village.

To these purely linguistic and morphological criteria may be added certain direct legal definitions. The *Lex Romana Burgundionum* already mentions what is later the share of the individual *Hufe* in the Mark as an appurtenance of the individual holding; *silvarum, montium et pascui ius, ut unicuique pro rata possessionis subpetit, esse commune.*[1] This passage is taken from Roman law; it shows how the transition from Roman to German law took place, and it also fully explains the role played by the "marca" in the appurtenance-formulae of the charters, and its parallel position to the *adiacentia* or *inculta*.

The *Lex Visigothorum*, on the other hand, contains several very interesting provisions concerning the *vicini*, who are regarded as the mark-associates in the Frankish period. The *vicini possessores* quarrel *de terris aut veneis vel edificiis.*[2] They are summoned to act as a jury of neighbours.[3] Information about wandering cattle is to be given to them,[4] the harm done by these is assessed in their presence, and in their presence also boundary-signs, which have been injured or removed, are to be replaced.[5] Finally, there is already mention of a *conventus publicus vicinorum*, to which certain information is to be given.[6]

If we put all this evidence together, it agrees with what we have already learnt from the *Agrimensores* about late Roman times,[7] and also, above all, with the position of the later Frankish-German Mark-associates. In one point in particular, the digging up of boundary-stones, Rudorff has pointed out the similarity between Roman decrees and those of the German Weistümer of the later Middle Ages.[8] But the latter are the chief evidence for the whole theory of the Mark-association! That such a strong similarity should already appear in the *Lex Visigothorum* is noteworthy, for it is well-known that this Law shows very considerable dependence on Roman Law. There can surely be as little doubt here of the source of these definitions as there is in the case of the *Lex Romana Burgundionum*.

Further light is thus thrown on the mark problem. One of the main supports of the Mark-association theory and its doctrine of common land-ownership was the so-called *Vicinenerbrecht* (right of succession of the *vicini*) which was abolished by an edict of King Chilperic (561–584). Gierke [9] thought that this was a remnant of the old common ownership of Mark-associates (*vicini*) in the arable land, for in default of direct heirs of the body they had till then had a right (prior to collateral relations) to inherit a neighbour's private property. But we can find an analogy to this in Greek and Roman law. In such a case, the *vicini* had a preferential right

[1] Tit. xvii, 6, MG. LL. sect. i, t. ii, 1, 141.
[2] ii, 4, 10, MG. LL., sect. i, t. 1, 103; cf. also, for the late Roman period, above, 139 f.
[3] viii, 4, 16, op. cit., 336.
[4] viii, 5, 4, ibid., 347.
[5] x, 3, 2, ibid, 397; cf. ibid., 3, Z. 10.
[6] viii, 5, 6, op. cit., 348.
[7] Cf. 139 f.
[8] *Röm. Feldmesser*, ii, 243.
[9] O. Gierke, "Erbrecht und Vicinenerbrecht im Edikt Chilperichs," *Zeitschr. f. RG.*, xii, 436 ff.

(*προτίμησις*) to neighbouring land,[1] an arrangement which may be easily explained as a result of the *ἐπιβολή* or *iunctio*. If adjoining neighbours on great Roman estates were compelled to take over uncultivated land as part of their taxes, it is quite comprehensible that such an advantage in inheritance would fall to their lot.

I should go so far as to assume that the old *Vicinenerbrecht* of Chilperic's edict, was based on similar conditions to this right of the Roman *vicini*. As a matter of fact, this edict had reference to a legal district where there were numerous Romans and where Roman law had held sway earlier.[2] Chilperic was king of Neustria, and in his edict it is expressly stated that the inheritance of land is to be governed by the same principles throughout his whole kingdom.[3] In other respects, too, he was much interested in Roman systems, and as a poet he imitated Roman models.[4] The edict is actually concerned with land belonging to seigneurial estates [5] and not with free Mark-associations, which can be only artificially assumed. Further, we know that in the Merovingian kingdom the Roman tax-system was retained.[6] Since we have already shown that the share of the *Hufe* in the Mark had in early Frankish times the same characteristic appurtenances as those which each single *sors* had in the *compascua* under Roman law, we have a right to assume that here also the *iunctio* had the same consequences, especially as these conceptions of *iuncta* and *subiuncta* show a direct parallelism with the marca.[7]

Thus a new light is thrown on the oft-quoted *Vicinenerbrecht*, which now appears to be a pre-eminently seigneurial arrangement. For the first time it is possible to understand the legal history of this important institution. If the former explanation is true, it is incomprehensible why this right, abolished by King Chilperic in the sixth century, should still have had obvious after-effects in the late Middle Ages, so that analogous arrangements in the Weistümer have been actually explained by O. Gierke as survivals. Similar legal conditions do actually occur at this late period; and they are the best proof of the correctness of my view. For these Weistümer are, as I have pointed out elsewhere,[8] seigneurial regulations about manorial conditions and belong to a time very similar to the late Roman period, inasmuch as feudalization of public authorities had produced an extraordinary increase of the landlords' power over their peasant tenants. The same iron ring of comprehensive authority was placed upon their rights at the end of the Roman period. A few modern critics have even tried to make out that Roman law was partly responsible for the deterioration of peasant conditions on the large estates. It is easy to understand why the right of succession of neighbours (*vicini*), so useful to seigneurial interests, turns up again.

The same origin is also to be attributed to another right which has been regarded as the second main attribute of the free Mark-association, the right of

[1] Cf. Zachariä v. Lingenthal, *Gesch. d. griech.-röm. Rechts*, 2nd edit., 1877, 211; 3rd edit., 236 ff. (1892).

[2] Cf. P. Roth, *Gesch. d. Beneficialwesens*, 56 f.

[3] Ibid., 77, note 136.

[4] Cf. E. Stein, "Des Tiberius Constantinus Novelle u. der edictus d. Chilperici regis," *Klio*, xvi, 72 ff. (1919).

[5] See § 2 of Chilperic's Edict immediately preceding, which speaks of *leodis nostris*. Also directly afterwards § 4.

[6] Cf. F. Dahn, "Zum meroving. Finanzrecht." *Germanist. Abhandl.*, z. 70. *Geburtstage Konr. Maurers* (1893), and also Roth, op. cit., 85 ff.

[7] See above, 144 ff.

[8] "Die Markgenossenschaft der Karolingerzeit," *Mitteil d. Instit. f. österr. Gesch.-Forschg.*, xxxiv, 425, 737 (1913), and *Krit. Vierteljahrschr. f. Rechtswiss.*, 3 F., xvii, 226 (1915).

veto against the settlement of strangers in the village. What of the famous title "*De migrantibus*" in the *Lex Salica*? We can find important analogies to this also in Roman law. This right of vetoing the entrance into the village of people from outside the mark had already arisen in connection with the ἐπιβολή or *iunctio*: *proximis consortibusque concessum erat, ut extraneos ab emtione removerent.*[1] Its root must be sought in the services of the village-inhabitants, which were laid upon them together with the ἐπιβολή by the territorial lord. It is for this reason that, in spite of occasional abolition (as in 391), it was ultimately retained. Honorius and Theodosius in 415 again decreed that no one except the *convicani* should have property in the *metrokomiae* (villages of free settlers). Leo and Anthemius stated still more emphatically in 468 that land might be expropriated by a *vicanus* only to inhabitants of the *metrokomia*, who were inscribed in its cadaster.[2] In this passage of the *Lex Salica*, we may assume a connection with late Roman development because there is evidence that the rights appearing in the preceding Title 44 (*de reipus*) were an imitation of the practice which had grown up in Gaul among the Roman inhabitants.[3] It is also remarkable that this title is lacking in the *Lex Ribuaria* which otherwise coincides with the *Lex Salica* in these passages.

The right of succession of *vicini*, and their right to veto the settlement in the village of dwellers outside the Mark, are not a survival of *free* Mark-associations nor of a peculiar German agrarian system, nor are they yet a proof of common ownership in undivided Mark-land among free peasants with equal rights.

Another phenomenon of German agrarian law is also irreconcilable with the old Mark-association theory, namely the right of assarting (*Bifangsrecht*) in the communal mark.[4]

If we examine the earlier St. Gall charters, which often speak of newly cleared land, we shall undoubtedly find that in all these concrete individual cases there is never a word about the permission of the village-community, the king or the count. On the other hand, it is expressly stated that individual ownership, and not merely a right of usufruct, is established in the case of reclaimed land. And these newly cleared pieces of land might also be acquired by purchase.[5] Here, therefore, no permission or agreement was necessary, and this fact, proved by the records, is irreconcilable with the common ownership of a compact association in the Mark. Each associate must have had an interest in acquiring as much private property as possible by clearing. And, in fact, the individual villagers also had different shares in the Mark, according to the size of their individual property, i.e. the number of *Hufen* they possessed.[6] Hence G. Caro [7] and after him Brunner,[8] were forced to the very hazardous admission that where clearance was effected by single individuals, the richer man, who had a larger number of serfs and beasts of burden, had an unequalled advantage in the competition for more property. But this makes the whole theory untenable, for by this means the Marks would soon have disappeared completely, and the supposedly equal rights would have quickly changed into the very opposite.

[1] Cf. Zachariä v. Lingenthal, *Gesch. d. griechisch-röm. Rechtes*, 2nd edit., 212, note 21, and Rostovtzeff, *Röm. Kolonat.*, op. cit., 343.
[2] Cf. Zachariä v. Lingenthal, op. cit., 226.
[3] Cf. H. Brunner, *Sitz.-Ber. d. Berl. Akad.*, 1894, p. 1289 ff.
[4] On the older theory of *Bifangrechtes* see Germ. edit., i², 367 ff.
[5] See the list of examples, 116, note 1.
[6] Cf. Waitz, *Die altdeutschen Hufe*, op. cit., 214, also v. Inama-Sternegg, *DWG.*, i², 109, note 3.
[7] *Jb. f. Schweiz. Gesch.*, xxvii, 355. [8] *DRG.*, 1², 297.

Thus the old Mark-association theory is faced on all sides by difficulties in explaining the evidence of the sources. These difficulties are solved at once, however, if we give up the fiction of a supposedly common ownership of Mark-associates in the Mark-land, and if we assume that clearance could proceed only in accordance with the size of the individual property (i.e. the number of hides). This assumption is soon seen to be justified by the statements given in the *Lex Burgundionum* about the Burgundians' principle of clearance, or the right to a share in newly reclaimed land. The latter obviously played an important part among them, as repeated legal enactments were recognized to be necessary on this point. Title xiii (*de exartis*) is especially significant. If a Burgundian or Roman makes a clearing in *silva communi*, he has to give the *hospes* an equally large piece of forest, and hold his own new clearing without interference from the *hospes*.[1] As later titles of this Lex show, the possessions of the Roman *possessores* were being encroached upon by the too extensive clearings of the Burgundians,[2] and it was laid down as a fundamental principle that half the forests should belong to the Romans. In individual cases, however, the size of the individual property in arable land, to wit the number of *Hufen*, was to be the standard in dividing the forest.[3]

These legal definitions, however, which had a general validity, are as decidedly against an autonomy of the Mark-association in the management of clearings as they are against any freedom of action on the part of the individual. Kovalevsky's theory that we have here a restoration, or, rather, a retention of the genuine German system of clearings,[4] is the exact reverse of the reality.

It is quite clear that the division of land between Romans and Germans created conditions which are irreconcilable with the Mark-association theory. It led to the separation of individual plots from the rest and promoted the development of private, not of common, ownership. Pallmann correctly remarked on the improbability that hitherto separate Roman holdings should now have been brought together to form Mark-associations.[5]

The conditions which we can prove to have prevailed in Burgundian land-division may have been general elsewhere, for even where we have no direct proof of such a division of the land, numerous Germans were settled on Roman soil on the basis of *hospitalitas*.[6] This explains the conditions of hereditary tenancy. These were not a new set of rules enacted by the Franks in the eighth and ninth centuries, for on the large estates such conditions were quite common by late Roman times. Since it was the aim of Roman estate-owners to bring the profitless uncultivated land under cultivation, they offered favourable terms to settlers, including hereditary tenancy with a moderate rent, or remission of rent for several years (*aretia*), and the right of clearance on the neighbouring waste and uncultivated land.

L. Mitteis has produced examples of this which show considerable likeness to, and even identity with, early German conditions, a resemblance which drew his attention to the early medieval right of *Bifang*.[7] This also explains the *adiacentia*

[1] MG. LL., sect. i, tom. ii, 1, 52: *Si quis tam Burgundio quam Romanus, in silva communi exartum fecerit, aliud tantum spatii de silva hospiti suo consignet et exartum quem fecit, remota hospitis commotione possideat.*

[2] Tit. liv, ii, ibid., 89.

[3] Tit. lxvii, ibid., 95.

[4] *Die ökonomische Entwicklung Europas* (Germ. trans., 1901), 182.

[5] *Gesch. d. Völkerwanderung*, ii, 324.

[6] Cf. above, 50 f.

[7] "Z. Gesch. d. Erbpacht im Altertum." *Abhandl. de sächs. Ges. d. Wiss. Phil. Histor. Cl.*, 20, 4 (1901).

and *appenditia*; their importance became more obvious during the controversy over the older German Mark-association, but the upholders of the old theory could not explain them satisfactorily.[1] They may be understood only by means of the "*subiuncta*" of Roman times, which they replaced.[2] In my opinion there is nothing to prevent us from assuming a continuity of this practice into German times. Mitteis has already drawn attention to the law of King Pertinax (193–4) which furthered these economic measures of the great estate-owners.[3] It was certainly promulgated with reference to the Germans, who at that time had settled in large numbers as *coloni* on great Roman estates. The validity of the general assumption that German influences were not at work in this matter is proved by the examples quoted by Mitteis, which show that the same practices had been followed long before in antiquity, and in regions such as Egypt and Syria, where German influence is non-existent. I believe that they are caused by natural economic interests which have made themselves felt at all times among different peoples. The Romans themselves did not invent the system of loan-land or develop it in any peculiar way. The material interests of early medieval estate-owners were much the same as those which had existed long before their day. They had no reason to abolish to their own disadvantage a development which was already in process. They may have adopted it all the more readily because the monarchy and the church, the leading estate-owners of these later times, continued to cultivate the fiscal lands of Roman times in accordance with local custom.

The artificial way in which the Mark-association theory has been further evolved is shown especially clearly in the distinction made by A. Meitzen. He thinks that the Mark, in which several villages had a share, is to be distinguished from the *Almende* which is similar to the Mark but belongs to a single village.[4] This theory has already been refuted.[5] Also, we know that Marks occurred where there was settlement on the single homestead system; the early St. Gall [6] and Lorsch [7] records give numerous examples of them in Upper Germany. The presence of individual ownership of arable land is, moreover, not inconsistent. It would only be inconsistent if it were assumed that the Mark- or village-community enjoyed a communal ownership of the Mark-land.

Th. Ilgen proved some time ago that in the Rhine-lands, where we know more about the Mark-associations, the earliest accounts show that the Salgüter, or at any rate the homesteads belonging to them, were the chief holders of Mark rights.[8] Finally, Karl Rübel has recently brought forward a new theory about the Mark. He assumes that the Franks had a special technical method of defining boundaries which was an innovation as compared with the old German practice. According to the latter, the districts were separated by waste land,[9] and the district lying within the waste land was the old German Mark; but Rübel thinks that this was never recognized as the *marca* by the Franks. On the contrary, there was a new arrangement and a definition of boundaries on Salian Frankish methods, applied by the Franks at first in the earliest settlements, and then introduced

[1] Cf. H. Wopfner, "Beitr. z. Gesch. d. älter. Markgenossenschaft," *Mitteil. d. Instit.*, xxxiv, 39 (1913).
[2] Cf. above, 144.
[3] Cf. above, Chapter III, 51 f.
[4] *Siedelung u. Agrarwesen*, i, 162 ff.
[5] Schröder, *DRG.*[3], 56, note 12; Below, "Allmende u. Markgenossenschaft," *Vierteljahrschr. f. Soz. u. WG.*, i, 120 ff.
[6] Cf. Wartmann, *UB. v. St. Gallen*, ii, 76 (a. 858).
[7] Cf. *Cod. Lauresham*, ii, 50, note 946.
[8] "Die Grundlagen der mittelalterl. Wirtschaftsverfassung am Nied. Rhein." *Westd. Zschr.*, xxxii, 18.
[9] *Die Franken*, 145.

generally in their conquered territories. This method of defining boundaries [1] was adopted universally, as if the whole land were *terra nova* where no boundaries had existed before. The Frankish kings, according to Rübel, had asserted a right to the *eremus* and *desertum*; and also a right to abolish the *solitudo* by causing Frankish officials to define the new Mark.[2] The setting of bounds to the Mark was the technical means of establishing the royal claim to the *eremus*.[3] The order to define the mark (*marcas scarire*) proceeded from the king, and was carried out by expert officials according to the principles of triangulation,[4] so that use was chiefly made of natural boundary lines such as springs and brooks, while in wooded districts pine-trees with signs carved on them (a cross), and in the mountains watersheds (ridges and summits), were employed. By means of this definition of boundaries royal land was everywhere separated from the *solitudo*, which had been in part artificially re-constituted (*desertum*) [5] by means of extensive confiscation, devastation, and deportation; and thus there was created a system of compact royal *villae*, *Königshöfe*, which formed the main centres of the military position.

Against Rübel's theories it can be argued that these Frankish proceedings are in no way peculiar or new. We find their separate elements already in existence in Roman times, especially in the writings of Roman surveyors. Springs and brooks, and mountain ridges and summits were constantly used even then to determine boundaries.[6] Special mention may be made of the *arbores finitimas* and *notatas* and *clavicatas*,[7] which, together with marked stones (*signata petra*, *signatus lapis* [8]), were regularly used by expert officials, the mark-separators and surveyors. On the other hand, the choice of prominent natural and easily recognized features as boundary marks was not a peculiar "Frankish system", but a natural and welcome necessity which would have led to the same procedure in any other land at any other time.[9] The Roman system may have had some influence. Among the Visigoths we find the notched trees again,[10] and in view of their great dependence on Roman law there can be little doubt that Roman models were the standard here. In fact I have a strong suspicion that the Roman word *scarire*, which is derived from Greek, and is supposed to be the technical term for this "specifically Frankish" type of setting bounds to the Mark, is taken over from the *agrimensores*; for among other words *scarifus* was used by them for a field-map.[11]

Rübel derived his theses chiefly from a few surveys of Marks which have survived from Carolingian times. O. Bethge, by means of some specially striking examples, proved that in the Marks of Heppenheim and Michelstadt [12] there was no question of a compact district of crown land or "*regnum*" in Rübel's sense; but that within these Marks there were numerous communities of free landowners together with other secular and religious property-holders, the confirmation of whose lands necessitated a more exact definition of boundaries at the moment when the king had just handed over fiscal territory to certain ecclesiastical estate-owners, in this case to Lorsch. There was no new boundary definition; the external boundaries were already determined. "There is, therefore, no

[1] Ibid., 156. [2] Op. cit., 158. [3] Ibid., 159.
[4] Ibid., 156. [5] Ibid., 160.
[6] Cf. Rudorff, *Röm. Feldmesser*, ii, 258. 5; Kovalevsky, op. cit., i, 104.
[7] Ibid., 1, 44. [8] Ibid., 1, 253. 21; 228. 13.
[9] O. Bethge, op. cit., 75.
[10] Cf. *Lex Visigot.* viii, 3, 1–4, MG. LL., sect. i, t. 1, 321 ff. This system is also found in Swedish law.
[11] Rudorff, op. cit., 1, 244, 4; also ii, 405.
[12] Op. cit., 73 ff.

formal systematic regulation of the Mark in the general public interest; it is a special necessity, the fact of the transference of property, which leads in this particular case to the more detailed definition of boundaries now seen to be necessary!"[1] This was also to the advantage of Lorsch.[2]

Analagous conditions have also been found to exist in the south-east Marks (Mondsee, Altaich).[3] Here, also, it could be shown that boundaries formed of waste land were still used during the Carolingian period, and that the Frankish colonization and the establishment of royal residences (*villae*) did not take place in the *solitudo*, but along the old Roman roads. In the case of the oft-quoted mark of Heppenheim on the Bergstrasse, recent archæological research has proved that this district was already settled in the Hallstatt epoch, and we know that there were settlements there in Roman times.[4] When the Franks set about their boundary definition there was certainly no *eremus* or *solitudo* in that area. Here as elsewhere it is rather a case of very ancient settlements, where quarrels concerning property might easily arise owing to the great number of persons owning land.[5] This extensive subdivision of land-ownership in a relatively limited settlement-area in the early Frankish period is, above all else, a clear proof of the great antiquity of cultivation in those districts. Rübel's Mark theory is not therefore compatible with the records, for these Marks were certainly not an innovation of the Frankish period.[6]

On the whole it must be admitted that the main error of earlier scholars lay in their assumption that whenever Marks were mentioned compact settlement districts of uniform Mark-associations were implied.[7] Let us recall the statement already made, that the Mark, in the original meaning of the word, is nothing but a boundary, an enclosure. This applies pre-eminently to the Frankish Mark-surveys. We must not read into them something that is as incompatible with the material content of these Marks as it is with a uniform technique of farming over such large districts.

We have now reached the point where we can judge of the relationship of the Roman system to the succeeding Germano-Frankish arrangements. There were already *pagi* among the Romans. The division of land into these is at any rate very ancient, existing even in pre-Roman times. A far-reaching parallelism with early German conditions is noticeable. The *pagus* had boundaries which were laid down in a solemn expiatory procession of the landowner living within them. This happened when the crops were ripe; the boundary was supposed to be closed against evil spirits by the procession. A common economy developed gradually from this sacramental association of the *pagani*. The Gau-associates were also called *compagani, pagani communes*. They had power as legal persons, the *pagani* held land. The Gau-associates had economic obligations in addition to the care of the Gau's sacred objects; i.e. the care of the roads, and the provision of wood and food to soldiers or imperial officials who were passing through. The dues of the *possessores* were exacted by the Gau officials (*magistri pagorum*) who also had to see that the laws of the place (the *Lex pagana*) were observed. These laws included decrees about the common

[1] Ibid., 75. [2] Ibid., 78.
[3] Reutter, in *Jb. f. Landesk. v. Nied. Österr.*, new edit., x, 24, 42 ff.
[4] Cf. above, p. 109, notes 3 and 4. [5] See Germ. edit., i², 379.
[6] The theory of Gau-marks or Gau-associations is equally untenable. For a discussion of this see Germ. edit., i², 379 ff.
[7] See Germ. edit., i², 381 f.

economic interests of the co-settlers; e.g. measures concerning adjacent paths, boundary quarrels, use of the undivided common land, etc.[1] These *pagani*, small independent peasants and tenants of the great *possessores* who did not themselves live on the land, settled either in homesteads (*vici coloniae*) or in villages (*vici*). The inhabitants of the latter, the *vicani*, also had a corporate union.[2] Thus, in fact, considerable similarities between the two systems may be proved. Moreover, in Roman times the position of a *fundus* is often described not only in relation to the *pagus* but also in relation to the *vicus*. It is a fact that the *vicani* formed a corporate body with a greater communal significance than the *pagani*. "The local compactness lends to the *vicus* a quasi-municipal significance."[3] The *vicani* have a right of ownership, the *vicus* also has absolute property in land and is a *corpus*, a legal personality. Moreover, in all this there is no antithesis to the German village. Only one contrast remains: that the Roman *vici* had no *territorium* but lay in that of the town.[4] But is this really a fundamental difference? The contradiction assumed by Schulten would apply only to those German villages which were completely independent of any great estate, and were absolutely independent landowners. If, as Schulten thinks, the German village field-system was only the *universitas agrorum qui ad vicum pertinent* in this narrower sense, then indeed he would look in vain for examples of it among German villages. For there, too, the soil chiefly belonged to the great estates of the king, the church, and the nobles who did not themselves live in the village. Even where the village contained smaller free landowners (as happened early in Roman times), there was no village *Flur*, which was a unit of ownership, for it was itself divided among various lords.[5]

So far, the existence of completely free Mark-associations has never been proved for the early German period; they have merely been reconstructed as a probability on the basis of later conditions, which are chiefly those of seigneurial land-ownership. Whenever the free Mark-associations appear later in the Weistümer, it is more and more obvious that they are derivatives of some originally seigneurial formation.[6] The fact that in the late Middle Ages the majority or all of the inhabitants of a village are free peasants does not justify the conclusion that that particular village had been a Mark-association from remote antiquity.[7] Early scholars and their recent adherents [8] proceed from the axiom that the so-called genuine Mark of free village-associates was the original form, and that the seigneurial Mark was developed in later times. No certain evidence or example of this can be given. The older theory of the Mark-association is built up on assumptions long ago proved to be false, viz. that all free organizations after the Carolingian period were deprived of their freedom and were absorbed by the great estates, which were supposed to spring up then for

[1] Schulten, *Philologus*, liii. For a full explanation and discussion of Schulten's theory see Germ. edit., i[2], 383 f.

[2] Halban-Blumenstock, *Die Enstehung des deutschen Immobiliareigentums*, 122, 135.

[3] Schulten, op. cit., liii, 658 f. [4] Ibid., 662.

[5] See my remark in *Wirtschaftsentwicklung der Karolingerzeit*, i, 223 ff.

[6] See my remarks in "Die Markgenossenschaft der Karolingerzeit," *Mitteil. d. Instit.*, xxxiv, 403, 425, and in *Krit. Vierteljahrsschr. f. Gesetzgebung und Rechtswiss.*, 3rd edit., xvii, 225 (1915).

[7] G. L. v. Maurer (*Gesch. d. Markenverfassung in Deutschland*, 1856, 94 ff.) pointed out various examples from the later Middle Ages which were looked on as free Marks, although the Mark-land did not belong to the associates but to a lord. And in this connection he acknowledged: "I, at any rate, know of no Mark in the later Middle Ages, in which all Mark-associates were true owners or landlords."

[8] Cf. Wopfner, *Mitteil. d. Instit.*, 34, 3 ff. H. Stäbler in *N. Archiv.*, 39 f., 695 ff.

the first time (*Obermärker*). As a matter of fact, the course of events was exactly the opposite. Marks which were originally seigneurial gradually became free and independent.[1]

In the case of Northern Germany (Westphalia, Lower Saxony, and the northern Rhineland) the Marks were in general originally uncultivated land, lying between the settlements and allowed to lie unused during recognized colonization, thus counting as *res nullius*. They probably did not come under that recognised organization "which people are so anxious to call very early"[2] until the twelfth and thirteenth centuries. Moreover, similar conditions existed in Upper Germany also. There, too, there were extensive areas of primeval forest which did not belong to great Marks, but were unowned, uncultivated land, upon which the Marks of the old settlements could encroach unhindered, or where new ones could be established.[3] Thus everywhere we have excellent examples of the manner in which the Marks arose, which is exactly as I had already assumed in dealing with the Carolingian period.[4]

Moreover, Schulten himself had shown that a sharp difference already existed in Roman times; for, besides such municipal *vici* as he brings forward in contrast to the German villages, which he regards as uniformly free corporate bodies, there were also quasi-municipal *vici*, independent villages, which, even according to his theory, possessed a *territorium*.[5] What fundamental difference is there then between this and German legal conditions?

In my opinion the transition from the late Roman to the early German system may be distinctly traced in certain intermediate stages. We have already heard that the great economic importance of the large estates often led to their exemption from the municipal system (*fundi excepti*).[6] In the fourth century we find numerous *vici* which had sought the protection (*patrocinium*) of great landowners. It has already been correctly pointed out that this patronage brought with it, for the *civitas* or Gau-community, the loss of part of its *territorium*.[7] This involved not only a departure from the Gau-community or municipal system, but at the same time a transfer into the manorial union. For these *vici* did not become independent village communities with their own rights; instead, a legal condition was established which appears in the German period to be the rule, i.e. they had become members and appurtenances of the great estates.

In another way also, the small free peasants were brought into closer economic connection with the neighbouring large estates. Just as the *proximi quique possessores* mentioned by Hyginus rented a piece of adjoining domain land in addition to their own free peasant lot,[8] so the same procedure may be traced in Frankish times,[9] and thus the peasants became not only sharers in the seigneurial mark (*compascua*) with rights of usage therein, but were also bound to render services to it.

[1] Th. Ilgen, *Westd. Zeitschr.*, xxix, 81. Cf. also A. Chabert, in *Denkschr. d. Wiener Akad.*, iv, 19.
[2] F. Philippi, *Götting. Gel. Anz.*, 1920, 52.
[3] Rennefahrt. *O. Gierkes Untersuch. zur Deutsch. Staats- u. RG.*, lxxiv, 9 (1905).
[4] *Die Wirtschaftsentwicklung d. Karolingerzeit*, i, 369.
[5] *Philologus*, liii, 663. [6] Cf. above, 135.
[7] Cf. Zulueta, *De patrociniis vicorum* in Vinogradoff's *Oxford Studies in Social and Legal History*, I, ii, 19 (1909). Also the oft-quoted passage from Salvianus of Marseilles, which is mentioned above, 91.
[8] See above, 135.
[9] Cf. my *Wirtschaftsentwicklung der Karolingerzeit*, i, 121, 178.

Hence, in this respect also, a connected and continuous development from late Roman to early German times has been proved. Let us recapitulate. The similarity of the early medieval Mark and the Roman *ager inutilis* (or more particularly, the *compascua*) is obvious not only as regards its material content (wood, pasture, waste land, water), but also in the appurtenance of the right of usage *pro rate possessionis* (according to the number of hides), and in the right of *Bifang*, which afterwards appears to be measured and limited. The economic and legal position of the neighbours (*vicini*) or Gau- and village-associates (*pagani, convicani*), reveal the same characteristics—hereditary rights in default of direct heirs, and a right to veto the settlement of foreigners in the village. The villagers are further summoned to act as a jury of neighbours in quarrels about land; united as an association in the Mark council, they supervise the local by-laws (*Lex pagana*), and deal with matters concerning the field-system, especially the maintenance of its boundaries (paths and boundary stones). Mark-associations already existed, therefore, in late Roman times, just as in the early German period. They might consist of free or unfree tenants (*coloni*). As a rule, the members were economically unfree; that is to say, they were settled on seigneurial land, a fact which explains their peculiar legal position without resorting to any of those inner contradictions urged on all sides against the German Mark-association theory (if by associations were meant free peasants with equal rights, who presumably had common ownership in the Mark).

Thus we find similarities in all directions, and they are also observable in the earlier German codes (those of the Burgundians and Visigoths) which, by reason of their special dependence in details on Roman legal conditions, show very clearly the connection between the two, and the transition from one to the other.

At the same time, however, we also see differences and new developments, set vigorously in motion by the arrival of the Germans. In my opinion these are not to be sought in the land leases, *Erbpacht* (hereditary tenure) and *Teilpacht* (*métayage*) but rather in one of the most important measures promulgated by the Frankish monarchy in the sixth century, namely the abolition of the hereditary right of *vicini*. It was replaced by a law which shows the great importance of the new German arrangements—hereditary rights were now extended to collateral relations, especially to brothers, thus strengthening the right of possession of individual peasants against the oppressive authority acquired by the great estates in late Roman times.

Other changes which now took place must be added, such as the breaking up of the old seigneurial estates in consequence of land division, and the establishment of numerous, personally free, small farmers on their holdings. We must, however, to-day relinquish the ideal picture drawn by the old theory. Certainly no independent peasant republics were formed of free Mark-associates, all with equal rights and equal property. But the military organization of the new society, and the existence of a band of followers gathered around each leader, brought about a further series of grants by the army chiefs and princes. The Roman fiscal property which they took over, did not remain as a series of compact estates in their own possession, but was to a considerable extent divided out, and fell to the lot of numerous free men belonging to their following.

Hand in hand, however, with the establishment of this small free peasant economy there goes the limitation of the individual's freedom to divide

the land in his possession—the German *Erbenwarterecht* and the *Freiteilsrecht*. We can for the first time fully understand the significant fact that in the German folk codes such surprising decrees are found wherever there was close contact with the Romans and their agrarian law, i.e. among the Lombards, the Visigoths, the Burgundians, and the Alemanni. The disadvantageous consequences, recognized by the Romans, of unlimited rights of disposal over private landed property, were obviously felt among the Germans, at any rate where they had just taken over those rights, as King Euric's example shows. These limitations,[1] which are peculiar to German law, strengthened the power of economic resistance of the poorer peasants and were an effectual protection to farmers, especially as the free sale of land was now abolished, and a prior right of purchase was introduced in cases of expropriation in favour of relatives (*Lex Burgundionum* [2] and *Lex Saxonum*).[3] The same tendency is to be observed in the difficulties that surrounded the making of gifts and wills which we have remarked among those tribes,[4] and in the exclusion of women from hereditary rights in the alod among the Salian Franks and the Anglo-Warni (Thuringians).

An interesting sidelight is thrown upon the economic importance of the German household communities (*Hausgemeinschaften*) by the decrees concerning the *Freiteilsrecht*. In this connection we learn that the sons often farmed the paternal property without dividing it [5]; a fact which provides a natural explanation of the frequent mention in records of *communes* and *consortes*, whom earlier scholars often mistakenly assumed to be Mark-associates and joint holders of common property.[6] According to the early Salian law, gifts of undivided common property were forbidden.[7] If the free right of disposal of the father was limited to that part of the house property which remained to him after it had been shared with his sons, then the maintenance of this household community as an economic unit would have an unmistakable importance in strengthening the social power of resistance of the free population, quite apart from the fact that the farming would be carried on more easily and with better results.

In this connection I may mention another social phenomenon which was very prevalent among the Germans in that early period, even if it was not peculiar to them, i.e. artificial relationships and fraternities. They were formed in order to lighten economic duties and the social burden which oppressed the farmers on the large estates.[8] The *adfratatio* among the Lombards, the *hermandad* among the Visigoths, and the blood brotherhoods of Northern law, have a characteristic importance in view of the abolition of the Roman hereditary right of *vicini* and the extension of hereditary right to collateral relations. We know, from similar institutions in late medieval times, that the tenants on large estates tried by these means to strengthen their economic position against the right of reversion claimed by the seigneurial estate. Since, however, this right of reversion was frequently urged against the sons who had received their portions, the numerous

[1] Cf. H. Brunner, "Beitr. z. Gesch. d. German. Wartrechtes," in *Festschr. d. Berliner Jurist. Fak. f. Dernburg*, 1900, 39 ff., and above, 115 f.
[2] Cf. above, 100. [3] Cf. above, 127. [4] Cf. above, 100.
[5] Cf. above, 100, and for the Alemanni above, 115.
[6] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, i, 346, and ii, 29, and *Die ältere Sozial- und Wirtschaftsverfassung der Alpenslawen* (1909), 165 ff.
[7] Brunner, op. cit., 56.
[8] Cf. my remarks in *Die ältere Sozial- und Wirtschaftsverfassung der Alpenslawen*, 171 ff.

peasant farmers on the great estates must have had a special economic interest in the maintenance of their household communities.

The German retinue of followers must have furthered and even facilitated such artificial fraternities, and this not only in the north.[1] There was a natural tendency for the land-owning leader to settle his military following in farms on his own estates[2]; and so the military organization of early German times, as emphasized by recent scholars,[3] was very likely to further such economic and social unions for peaceful purposes after the settlement had taken place.

Important economic and social changes were also caused by the development of the "beneficial" system, a subject which naturally arises from mention of the personal following and of military organization. This will be described in greater detail later on. It will suffice for the moment to refer briefly to the economic importance of the fact that the lord provided his vassals with land. The benefice or land-loan (*Lehensgut*) was at first a compensation for definite services rendered in the field or at court, and in principle at least was not hereditary, and remained undivided. This strengthened the economic position of the vassals, and differed from the late Roman system of *beneficia*. We can see these influences at work in the phenomena of the succeeding Carolingian period, when abuses begin to creep in. The first Carolingians were constantly obliged to forbid their vassals from illegally converting benefices into allodial property,[4] or from using them for the economic improvement of their own private property,[5] a procedure which might cause the deterioration of the benefices. These benefice holders, however small the economic value of their benefices might be, were in quite a different position to their lord from that of the Roman *coloni*. They remained a valuable support on which he could count in time of war, and his prestige and military power depended on their number and strength.

In conclusion, reference may be made to a right which, although it already existed in Roman times, must have acquired a new importance in the German period, to wit the king's right to authorize a settlement to take place by special privilege, even if it overrode the prior claim of *vicini* or *compagani*. This royal right was apparently more often exercised by the Frankish kings than by the Roman emperors, and was of considerable significance, for by this means the king was enabled to settle colonists in places where he himself was not a landowner, even against the wish of the village community. If we remember the extensive colonization which was going on at the time and the way in which the king's military interests were affected by it,[6] especially in districts where it was important for the new Frankish power on Roman soil to find strong and commanding positions, these measures are seen to have a very special political and economic purpose. The oft-quoted example of Bennit (811) in the time of Charles the Great shows that such settlements might in special cases be made compulsorily in face of a refusal motivated by political opposition on the part of the villagers, who, in this case, were Saxons.[7]

Thus, in general, the entry of the Germans into the Roman system brought

[1] Cf. especially M. Pappenheim, *Altdänische Schutzgilden*, 21 ff., 41 ff., and *Zeitschr. d. Savigny-Stiftung, f. RG.*, xxix, 304 ff., esp. 322 ff. (1908).
[2] Cf. above, 46 f.
[3] Cf. above, 105 f., and also F. Kauffmann, *Deutsche Altertumskunde*, 1, 257, 445 (1913).
[4] Cf. my *Wirtschaftwentwicklung der Karolingerzeit*, i, 111 f.
[5] Ibid., 270.
[6] Cf. above, 110.
[7] Cf. Schröder, *Ztschr. d. Savigny-Stiftung f. RG.* ii, 63.

with it very important innovations and changes, which must have considerably improved the position of the small free farmers, and especially of the tenants on the large estates. We can well understand how it was that writers, such as Salvianus of Marseilles, could go so far as to assert that their conditions of life were much better than those of the Romans.[1] Not only this writer, but also Orosius tells us that many preferred to lead a life of freedom and poverty under the barbarians rather than to lose everything under the unbearable oppression of the Roman estates. We have seen, too, that the same was true of the Lombards.[2]

Finally, the new organization of authority in the German empire must have differed from the late Roman system to the advantage of the former. The concentration of Roman rule, on a fiscal policy, which was concerned only with securing the highest possible taxes, had delivered the farmers of the great estates entirely into the power of their chief tenants (*conductores*). That peculiar community of interest, which had existed between the intendants of imperial domains (*procuratores*) and the chief tenants under their supervision, disappeared. Not only were the large estates in part broken up, but the majority of the free tenants, who now settled there as a result of the divisions, had in their public officials, especially in the counts, a firm support against illegal oppression. The rule of the domains, which were managed by the owner, was under the control of the central government and the king's officials (*missi dominici*).[3]

Apart from the direct statements of sixth-century Romans, the changing times and the fruitful results of this occupation of land by the Germans may also be seen indirectly in the greater economic activity and the positive achievements of these new agriculturists. To the great colonizations of early Frankish times we must add the measures which the Burgundian kings found it necessary to take in respect of clearings and assarts (*de exartis*) in order to prevent the Roman *possessores* from being economically overreached and outstripped.[4] Is this not a practical proof of the advance of German farming and of that land-cultivation which the emperors of the late Roman period had furthered by all the means in their power?

The impulse to such progress was certainly given by the peculiar nature of German legal conditions. As the benefice was originally given in return for definite services and payments and was left with the holder only so long as he continued to carry these out, so the early German land-grants were subject to the same limitations as those of the Romans.[5] They were valid only for the life-time of the recipient, and could be recalled by the donor when the conditions under which they were given no longer held good. Thus in the economic sphere, this characteristic of early German civil law offered a powerful incentive for the fruitful use and greatest possible development of individual capacities. The unfree, also, who farmed the land allotted to them independently and rather differently from the Romans,[6] must have taken a special interest in it,[7] since

[1] Cf. above, 91.

[2] Cf. above, 95.

[3] Cf. the Capitulary of Aachen (811): MG. LL., sect. II, I, 172, c. 19. Also my remarks on the financial system of the early Middle Ages in *Vierteljahrsschr. f. Soz. und WG.* (1918), xiv, 519.

[4] Cf. above, 99 f.

[5] H. Brunner, "Die Landschenkungen der Merovinger und Agilolfinger," *Sitz.-Ber. d. Berliner Akad.*, 1885.

[6] Cf. above, 38 f.

[7] Cf. also my *Wirtschaftsentwickluneg der Karolingerzeit*, ii, 49.

after payment of their fixed rent to the landowner they could use the surplus for themselves without being hampered by immoderate dues. In fact, a breath of fresh air blew into the decaying Roman world. Its systems were not destroyed. The Germans adopted them, but had, at the same time, the capacity to develop what they adopted with new vigour and in their own characteristic fashion, and so to change it to suit their needs.

The same is true of the technique of agrarian economy, and we must, in conclusion, consider the technical methods of farming in vogue among the Romans and Germans. It becomes plain when we consider the traditions handed on by the Roman surveyors and the *Scriptores rei rusticae* that the Germans in Central Germany owed their progress in agriculture and craftwork, as well as in art and science, to their long and strenuous warfare with the Roman Empire.[1] The writings of Roman surveyors are known to us in part from manuscripts belonging to the early medieval period, including some of the Carolingian age.[2] They were obviously often read at that time and probably put to practical use. We know from them that Roman agrarian economy was highly developed[3]; but one important fact must be kept in mind; it was not a uniform system applied at all times and places throughout the wide regions of the Roman Empire. There were important differences caused by differences of soil, different opportunities for marketing natural products, and a different relation between the technical means of communication and the state of agriculture. For example, in Southern Italy, especially in Apulia, there were extensive grazing farms; in certain parts of the rest of Italy oil and wine were the chief products; in the Orient and in Africa the cultivation of figs was important. Stock-breeding was vigorously carried on together with crop-farming, and was also highly valued on account of the manure obtained.[4]

Many definite statements of the *Scriptores rei rusticae* show that the differing types of soil were taken into serious consideration in farming.[5] Crop-fields and cultivated ploughlands (*arva*) were taxed according to their productivity. In speaking of Pannonia, Hyginus expressly mentions that taxes were levied according to productivity, as to whether it was a question of *arvi primi* or *arvi secundi* or of *prati*, *silvæ glandiferæ* or *silvæ vulgaris pascuæ*.[6] The soil was cultivated with due regard to its quality, and was suitably manured. Columella discusses manure in detail, and gives special directions for the use of the dung of different animals.[7] Marling was known as well as the different kinds of animal manure[8]; according to Varro such fertilizers were used especially in Transalpine Gaul as far as the Rhine.[9] Moreover, leguminous plants, chiefly lupins, beans, and vetches, were employed as fertilizers, as they are to-day, by ploughing them into the soil.[10]

The intensiveness of cultivation is seen in the careful directions of the *Scriptores rei rusticæ* about frequent ploughing (*iterare*, *tertiare*, etc.), the use

[1] W. Arnold, *Deutsche Urzeit*, 261 (1879).
[2] Cf. Thulin, "Die Handschriften des Corpus Agrimensorum Romanorum," *Abh. d. Berliner Akad.*, 1911, Anh. ii, esp. 41 ff.
[3] See Germ. edit., i², 397, note 352.
[4] Varro, *De re rustica*, i, 44; also Gummerus, *Der röm. Gutsbetrieb*, 19.
[5] Cf. esp. Columella, *De re rustica*, ii, 2, 2.
[6] Rudorff, *Feldmesser*, i, 205. 13.
[7] ii, 9, 9; cf. also ii, 14.
[8] Columella, ii, 16.
[9] i, 7. 8.
[10] Columella, ii, 14; ii, 10, 1 and 7.

of light and heavy ploughs,[1] and of different beasts of burden according to the quality of the soil, so that the arable land might be ploughed to the required depth.[2] Harrowing (*occatio*) was regarded as an urgent necessity,[3] and for certain kinds of produce (*panicum et milium*) hoeing (*sarritio et runcatio*) was recommended.[4] For stock, not only grazing but also stall-feeding was customary.[5] In spring, the cornfields were fenced in to keep out the cattle, which were driven on to the pasture land.[6] Hay, vegetables, and fruit were much cultivated on account of the high prices which they fetched, especially where neighbouring markets offered good opportunities of trade.[7] Cato stressed the importance of this, and the later *Scriptores rei rusticae* to some extent adopted his directions.[8]

As to the general system of farming there were certain distinct differences. There were districts of extensive grazing, as, for example, the great estates in Africa or Apulia, which have already been mentioned.[9] The so-called field-grass system of convertible husbandry also occurred where conditions of soil favoured it; in the mountains for example. But it would be wrong to consider any particular system as characteristic of the Roman period. Rotation of crops over a period of several years, quite in the modern style, may already be observed; Columella speaks of it in dealing with meadow cultivation.[10] Varro also quotes a saying of Lucinius, which is noteworthy: *Agrum alternis annis relinqui oportet, aut paullo levioribus sationibus serere, id est, quae minus sugunt terram.*[11] The first part of this passage may refer to a two-field, or field-grass system, but the second distinctly indicates a rotation of crops, with lighter crops following heavier ones. Fallowing is also repeatedly mentioned.[12]

For these reasons earlier scholars used to assume that the Romans introduced the three-field system to the Germans.[13] M. Weber denied this, basing his denial on general theoretical grounds, but especially on the fact that three-field farming was essentially the system not of individual cultivation but of a village community, and was inseparable from *Flurzwang*, which was not known to the Romans.[14] His argument is arbitrary and inconclusive. On the whole,[15] the relation between the German and Roman agrarian systems can hardly be so sharply defined as it is in Max Weber's arguments in support of his view: an individual economy on the one hand, and a communal on the other. We have already seen that many of the characteristics of what earlier scholars considered to be a specifically German communal economy, a Mark-association of *vicini*, already existed on the great estates of late Roman times. In actual fact the Romans knew and practised the three-field system[16]; and there is evidence of it among the Germans in the time of Pliny.[17]

An important support of the older Mark-association theory has been found in a technical detail, the so-called fence-duty of the Mark-associates, which

[1] Columella, ii, 10, 33.
[2] Columella, ii, 2, 24.
[3] Columella, ii, 4.
[4] Columella, ii, 9, 18; ii, 11.
[5] Columella, ii, 3, 2.
[6] *Prata defendi a pastione*, Varro, i, 30, 37; 5; cf. also *Thesaur. Ling. Lat.*, v, 296, b.a.
[7] Gummerus, *Der röm. Gutsbetrieb*, 56 and 85.
[8] Cf. Varro, i, 7, 10; Columella, ii, 2.
[9] Gummerus, op. cit., 50.
[10] ii, 18, 4.
[11] Varro, op. cit., i, 44, 3.
[12] Columella, ii, 2; ii, 9, 15; ii, 10, 7.
[13] e.g. G. Hanssen, *Agrarhistor. Abh.*, 1, 153.
[14] *Röm. Agrargeschichte*, 220.
[15] For an account of the controversy on this subject see the Germ. edit., i², 400 ff.
[16] Magerstedt, *Bilder aus d. röm. Landwirtschaft*, v, 220 ff.
[17] Cf. M. Much in *Mitteil d. Anthropol. Ges. Wien*, viii, 262.

was regarded as the chief proof of communal cultivation, and was urged in England on behalf of the open-field system. But a closer examination of the documentary evidence makes it quite clear that it is no proof of communal farming by the whole village; it is the personal duty of the individual to fence his own property, and not a general obligation of the community to fence the arable land of the Mark as a whole.[1] A passage in the laws of the Anglo-Saxon king Ine (688–695) distinguishes clearly between those villagers which had fenced in their lot and those which had not.[2] A similar passage in an edict of the Lombard Rothari is equally clear.[3] The Visigothic Law, in a more detailed passage, expressly declares that communal pasturage was permitted only where the individual had not completely fenced in his land.[4] Other documentary references to this matter of fencing, the Bavarian Law,[5] and the poem by Wandelbert of Prüm about farm work in the different months of the year,[6] are such that nothing about communal fencing or a village economy can be read into them. Indeed, nothing is to be found there which was not already in existence in Roman times,[7] so that we even get the Roman technical term, *defendere*, adopted. The fact that these particulars occur in the Lombard and Visigothic codes, which were so strongly influenced by Roman conditions, may be taken as proof of the connection.

Further, my general conclusion is that this *continuity of development characterizes the whole system of agrarian economy and technique.* Wandelbert of Prüm's poem on farm work in the different seasons has been rightly regarded by economic historians as a valuable source of knowledge for the early German system of farming.[8] v. Inama-Sternegg also referred to the similar description in an Anglo-Saxon calendar of the eleventh century, already quoted by Anton.[9] But we have a third poem of this kind, also belonging to the ninth century, which was written in Salzburg.[10] As far as I can see, it has not yet been used by economic historians, though it has been studied from the standpoint of the history of art.[11] G. Swarzenski made a special investigation of the question as to whether this Salzburg cycle of the months was influenced by classical models. He admitted the possibility but finally decided against it, and described the pictures as a Carolingian invention.[12] This picture-cycle is preserved in two Salzburg manuscripts, which do not give the original version, but one based on a northern French model of the time of Archbishop Arno (d. 821). The text consists of astronomical and chronological information with illustrations similar to those in classical manuals.[13] Swarzenski thought there was no doubt that these astronomical illustrations were derived from classical models, as was evident from their artistic treatment of the subjects.[14] Thus, even if the pictures of the months were invented in Salzburg, it may be considered certain that the whole idea goes back to classical times; the verses on the months, which are closely connected with them, are also copied from classical models.[15] There is considerable significance

[1] *DWG.*, i, 86.
[2] § 42, Liebermann, i, 106.
[3] § 358: MG. LL., 4, 82.
[4] V., 5, 5: MG. LL., sect. i, t. i, 347.
[5] Tit. x, 18.
[6] *MG. poetae Lat.*, ii, 607.
[7] Cf. above, 162.
[8] Cf. v. Inama-Sternegg, "Rheinisches Landleben," in 9 *Jahrh. Westd. Zeitschr.*, i, 277 ff.
[9] *Gesch. der deutschen Landwirtschaft*, i, 46 ff. (1799).
[10] *Ydioma mensium singulorum. MG. Poetae Lat.*, ii, 644 ff.
[11] See Germ. edit., i², 405.
[12] *Die Salzburger Malerei, Textbook*, p. 16 (1913).
[13] *Die Salzburger Malerei, Textbook*, p. 14 (1913). (*Denkmäler d. süddeutschen Malerei des frühen Mittelalters*, ii.)
[14] Ibid., p. 15.
[15] Cf. the examples in the footnotes of the edition *d. MG.*

for the economic historian in Swarzenski's very important commentary, in which he studies the representations of the different months and proves that much was borrowed from a classical cycle, especially where rural operations are depicted.[1]

We have before us here the earliest examples of illustrated medieval calendars very like those which have survived up to our own day among the rural population —i.e. peasant calendars, which give for each month a few short verses about farm work, with suitable illustrations. As their origin is apparently classical [2] it may be assumed that the contents, which are so interesting from the standpoint of agrarian economy, were also derived from late Roman models. Not only have such verses for each month been found in the classics,[3] but it is obvious from those which have survived from Roman times that they were used to explain the pictures of the months [4]; an example of this is the calendar of the papal calligraphist Filocalus in 354.[5] Not only is it similar in purpose and content, but in certain passages the Salzburg verses show a direct dependence on it which cannot be accidental. Thus these unassuming Salzburg poems, considered by their first editor, E. Dümmler, "to have no artistic value and to contain no historical information," [6] give us, now that they have been placed in the right light by artistic and philological research, a quite unexpected insight into the historical connection prevailing in the economic sphere between late Roman times and the early German Middle Ages.

This is, indeed, the best possible moment for the study of early medieval economic and social history. Its auxiliary sciences in the realm of cultural history have produced such a wealth of fresh revelations that it has received a new and firm basis, and one with quite different premises. The number of available records and sources of information has grown enormously, and the development of historical method and scientific criticism has done much to rescue them from arbitrary combinations by ingenious theorists, and to set them on a firmer footing. Thus, the general development of civilization in pre-Carolingian times, and after the German settlement of the fifth and sixth centuries, appears in quite a different light from that in which it was viewed by the older historians.

I have been attempting to determine the nature of the transition from so-called antiquity to the early Middle Ages, by studying concrete examples in country after country and town after town. Despite the widespread destruction consequent on recurring periods of interminable warfare, there was no complete annihilation of the former civilization. There is no doubt that in many areas of settlement real continuity existed; the transition stage, and a linking up between the old and new forms, are plainly apparent. But of course it must not be imagined that this continuity of civilization meant an absolute conformity to previously existing conditions. Changes of many kinds came about. Even in the former settlements, and where survivals of the former population are found, a new order prevailed. Not only did strangers come to be in authority, but the scope and nature of authority itself changed.

[1] Op. cit., 17 ff., esp. February, p. 181.

[2] Dümmler himself assumed this, for he says of the verses on the twelve months: "They belong to a type of didactic verse which may be traced from classical times through the Middle Ages to our calendar of to-day." *Arch. f. österr. Gesch.*, xxii, 283.

[3] Cf. *die Anthologia veterum. Lat. Epigramm. et poetarum*, ed. H. Mayer (1835), ii, 53 ff., Nos. 1037 1053.

[4] Riegl, "Die mittelalterl. Kalenderillustration," *Mitt. d. Instit.* x, 19 ff.

[5] Cf. ibid., No. 1038.

[6] *Arch. f. österr. Gesch.*, xxii, 283.

Chapter VI

POLITICAL STRUCTURE

CONTINUITY of settlement and economy does not by any means involve continuity of the political and social order. Indeed changes in the social order must at once have given rise to changes in political structure, and must have caused national characteristics and new administrative problems to become of decisive importance. This is the essence of the great problem of *Kulturgeschichte* which we are considering. If the former and all too naïve theory of a catastrophe has become untenable, and if we have proved that no complete destruction of the older order occurred, then the great question as to how the new order came about acquires a different significance.

The new wielders of political power, the Germans, as we have already seen, were not uncultured "Barbarians" or semi-nomads in a primitive stage of development, but had been in contact with the Romans for centuries and had had many opportunities of learning and valuing their ways. Moreover, they are described as being very intelligent and adaptable. When at last they reaped the consequences of their lengthy economic and military penetration of the declining Roman Empire, and by their military power made themselves lords of the Roman provinces, they found before them new tasks of political organization. We must realize that these were more difficult and more complicated than earlier writers have represented them. For since the old order was not completely destroyed, nor the Roman population enslaved, the German conquerors must have had to find some *modus vivendi* with them. This was no easy matter and it is, therefore, unlikely that the new order started *ab ovo* from quite primitive beginnings. It can hardly have been possible to introduce a purely German form of organization, completely ignoring all the former Roman systems. The way to a compromise had already been indicated to the Germans by their position in the Roman Empire during the previous centuries. With the assumption of authority their political aims were bound to change. As peace was gradually introduced it was to their own interest to maintain the existing culture and its material conditions, both in economic and social life. From the beginning it was necessary to adapt themselves to the surroundings into which they now entered as rulers, especially in districts where the Roman population was numerically preponderant. For we must not forget that the new states set up by the Germans on Roman soil had to reckon with such a large Roman population that the new rulers were in some places (for example in Italy, Spain, and Gaul) considerably in the minority. Even in what is now the south of Germany and in the Rhineland, as far as the Imperial frontier, there was a considerable Roman population, which was by no means to be underestimated.

It is not easy to establish in detail the way in which the necessary reconstruction was accomplished, for the sources of information at our disposal are one-sided and of unequal value. We have to rely chiefly on Roman writers

who use the customary Roman terminology and thus sometimes fail to do justice to characteristically German conditions. This is notably the case with Cæsar and Tacitus. Their accounts, which are undoubtedly valuable, have been taken as the basis for all later descriptions and implicitly believed, yet it has for long been recognized that they have given rise to serious errors. Both are based on hearsay and are definitely biased.[1] More important still, between those accounts and the setting up of the new German states on Roman soil lie five or six centuries —a mighty interval of time—and, most significant of all, during those centuries the penetration of barbarians (mainly Germans) into the Roman provinces and the Roman administration was steadily increasing, so that in the fifth and sixth centuries A.D. that which was true of the beginning of the Christian era no longer held good. We can measure the extent of this vast transformation by the changes in the meaning of words expressing the fundamental conceptions involved in political life. What did *civitas* mean during the long period which separates Cæsar from Gregory of Tours?[2] Not only "town" and "state", two conceptions which are closely connected in the ancient world, but, at least in Cæsar and Tacitus, a general political body, a public union in contrast to a private one.[3] Müllenhoff defined it as "a single compact and politically independent folk-community".[4] But this will not do, for the same term is used by the same writers for *gens* and *natio*, while on the other hand several *civitates* form a single people.[5] Therefore the conception of a tribe or "folk" which has often been used for it, is not really suitable and may be misleading. Neither political independence nor the fact of belonging to a particular "folk" (*Völkerschaft*) are necessary attributes of the *civitas*. It is uniform neither in race, nor in size. In this connection Waitz has rightly pointed out that "our language is no more capable of expressing these differences than was that of early times". Moreover, it is obvious that Cæsar and Tacitus themselves often find it difficult to express the idea adequately with the Roman terms (*civitas*, *gens*, *natio*). It is quite impossible to do so in the later German period, when the Roman political and administrative organization had become barbarized.

Let us look more closely at specific examples of the German *civitates*. H. Brunner noticed a great difference between the west and central *Völkerschaften* of the Germans on the one hand and the political unions of the east on the other. In the former considerable political divisions may be seen, whereas the latter are more comprehensive.[6] The true significance of this difference can be understood by examining the results of the excavations in the *Limes* which have yielded much important data, especially with regard to conditions in the West. We know to-day[7] that Gau communities with only a *vicus* as their centre are officially called *civitates*. Thus we have the *civitas Ulpia Suevorum Nicretum*, the Suevi of the Neckar round Ladenburg, the *civitas Mattiacorum* round Wies-

[1] See Germ. edit., i², p. 64, note 52, (p. 34, note 3 of English edition).

[2] See the article "Civitas" by Kornemann in Pauly-Wissowa's *Realencyklopädie d. klass Altertumswiss.*, suppl. i, 300 ff. (1903); and *Thesaurus Linguae Lat.*, vol. iii, 1279 ff.

[3] See the references collected by G. Waitz, *Deutsche VG.*, i², 203; and by F. Dahn, *Könige*, i, 40 ff.

[4] *Abhandl. d. Berliner Akad.*, 1862, 529.

[5] See Kuhn, *Die städtische und bürgerliche Verfassung des Römischen Reiches bis auf Justinian*, ii, 407, ff., and S. Rietschel, *Die Civitas auf deutschem Boden bis zum Ausgang der Karolingerzeit*, 17, note 2.

[6] Op. cit., i², 157.

[7] E. Fabricius has proved it for Baden, "Die Besitznahme Badens durch die Römer," *Neujahrsbl. d. Badischen Histor. Kommission*, N.E., viii, 63 ff.

baden, and the *civitas Taunensium* round Heddernheim (Nida). Bordering on the Gau of the Suevi of the Neckar on the south there was the *civitas Aquensis*, with its centre at Baden-Baden. Rottenburg was the centre of the *civitas Sumelocennensis*; and in the district of Wimpfen there were as many as three *civitates*. Here, therefore, *civitas* means Gau-community. In this region the Germans for the most part took over the Roman names of the Gaus; the Lobdengau of Lopodunum (Ladenburg), the Nidagau of Nida (Heddernheim), the Elsengau (*pagus Alisinensis* [1]), the Augst-gau of Augusta Raurica,[2] etc.

The divisions in the west and the centre may be easily explained by the late Roman provincial or Gau organization which was far developed there, rather than by the peculiarities of the German states. The Germans took over the Roman organization, as we learn from these and other Gau names in the early medieval period. In the east, however, where the Roman system of administration had not penetrated far, the description of large unions as *civitates* is easily understood, because the term is used by Roman writers, living at a considerable distance, in a vague and indefinite sense to describe whole peoples or sections of peoples. *Civitas* is the folk-community, differing widely in size.

Let us now follow the Roman development, since our information is derived only from Roman sources. At the end of the second century a process of change begins; the old folk-community is replaced by an urban organization and *civitas* denotes the autonomous town with its district.[3] This sheds light on the German πόλεις [4] mentioned by Ptolemy in the second century, for πόλις is a technical term in the legal terminology of the time.[5] When in the fourth century political administration was succeeded by ecclesiastical administration, *civitas* adopts the meaning "episcopal town" or "episcopal diocese". This division appears to be already complete in the so-called *Notitia Galliarum* of the beginning of the fifth century, according to which Gaul was divided into 115 *civitates* of this kind.[6] The folk-community became a land-community.[7] This use of the word *civitas* is indicated already in Tacitus,[8] although he uses it also at times for *gens*, *natio*, *populus*. These land-communities differed greatly in size, even in the time of Tacitus. We cannot, therefore, attempt even an approximate calculation of their extent. I do not believe that the practice of securing the German *civitates* by laying waste a wide boundary zone, as described by Cæsar and other German writers, was followed in the case of every single *civitas*; it probably took place only in the exterior and greater folk-unions or states, which were also described as *civitates*.

The theory is widespread that *pagus*, *Gau*, was a subdivision of the *civitas*. It could be so, and certainly often was so; but not always. *Pagus*, *Gau*, is a word of many meanings which may describe any definite district.[9] *Civitas* did not simply mean a federation of states, and *Gau* the German single state. Smaller

[1] See E. Fabricius, op. cit.; and Krieger, *Histor. Topograph. Wörterb. d. Grossherzogt. Baden*, 144.
[2] See Germ. edit., i², 112.
[3] Kornemann, op. cit., 303; and Ad. Schulten, *Die peregrinen Gaugemeinden d. Römischen Reiches*, Rhein. Museum, l, 524.
[4] See above, 57.
[5] Cf. Schulten, op. cit., 554.
[6] MG. AA., ix, 552 ff., and S. Rietschel, op. cit., 21 f.
[7] As a definite example of this change, see the conditions in the "Civitas Basiliensium", details of which are given by Th. Burckhardt-Biedermann, *Die Kolonie Augusta Raurica* (1910), 25 f.
[8] See the references quoted by F. Dahn, op. cit., i, 55 f.
[9] L. Brunner, *DRG.*, i², 157, note 4.

civitates could not be subdivided further into Gaus; on the other hand, it was possible for single Gaus to grow into independent *civitates*.[1] Is there, then, any political meaning to be attached to the conception *pagus*, which is used by Cæsar and Tacitus in describing German conditions? In my opinion a distinction must be made between the later term *pagus* (meaning *Gau*) and its use by these Roman writers. The German Gau-names in Frankish and other documents from the eighth century onwards are mostly nothing but geographical descriptions. There are Gaus extending into several counties (*Grafschaften*), and counties in several Gaus. Moreover, the variations in their boundaries are evidence that these Gaus were not political entities.[2] Gau is not only a purely territorial term but occasionally denotes (as do the names of political districts, *centena*, *comitatus*, *ducatus*, etc.) the people belonging to the Gau. For, above all, one important phenomenon must not be overlooked. The free Germans who have not entered into any relationship of patronage or dependence are not infrequently described in the Frankish period as *pagenses*, in order to distinguish them from tenants on seigneurial estates, and, on the other hand, the term is used with the same meaning as *cives*.[3] This affords a distinct indication of the special meaning of *pagus*. To belong to it was the condition for the exercise of certain public rights.

In order to understand the language of Cæsar and Tacitus, we must consider Roman legal concepts. In Roman times *pagus* had a definite legal and political meaning.[4] It had not only an established frontier and territorium but also possessed its own religious ceremonies and administration for laying out and cultivating the land, its own directors (*magistri pagorum*) chosen annually, and assemblies (*conventus*) of the Gau-associates, by which the cultivation of the land was carried on. Here we already find the members of a Gau-community described, as later, by the words *pagani* and *cives*.[5] The size of the community varied considerably. The *pagus* might be the territorial equivalent of a *civitas* or a subdivision of one.[6] Hence we have a great variety in the use of the word.

The theory that the *pagus* of classical writers was always the hundred is quite untenable. To my mind it is a decisive fact that the economic hypothesis on which that theory is based had no real existence, for the so-called "*Hufe* theory", according to which the hundred consisted of 100 units of land (*Hufe*, *Grosshufe*, *hide*) to which was attached the obligation of attendance at the moot (*Dingpflicht*)[7] is quite incorrect. S. Reitschel himself had to admit that "this division into hundreds soon disappeared, on account of the form adopted by the great seigneurial estate in Germany". But there is no evidence of the territorial hundred until later; it does not appear in England until the tenth century.[8] Moreover, it is now proved that the great estates did not appear for the first time in the Carolingian period, as scholars used to think, but were already in existence in the time of Tacitus.[9] The division into hundreds would, therefore, have been abolished, or at least broken then. Moreover, Tacitus himself tells

[1] Ibid. [2] Rietschel, article on the Gau in *Hoops' Realleviкon d. german. Altertumskunde*, ii, 124.

[3] See my essay in *Mitteil. d. Instit. f. österr. Gesch.-Forschung*, xxxiv, 418, and Fehr, "Landfolge u. Gerichtsfolge i. frank. Recht." *Festgabe f. r. Sohm*, 1914, 421.

[4] See Ad. Schulten, "Die peregrinen Gaugemeinden des Röm. Reiches." *Rhein. Mus.* l, 489 ff. (1895), and "Die Landgemeinden im Röm. Reich." *Philologus*, liii. 631 ff. (1894).

[5] Schulten, *Rhein. Mus.*, l, 547; *Philologus*, liii, 634, 657 ff.

[6] Ibid., 53, and *Philologus*, liii, 678. [7] See also S. Rietschel, op. cit., 573.

[8] H. Brunner, *DRG.*, i, 2, 160; see also Cl. v. Schwerin, *in O. Gierkes Untersuch. z. Deutschen Staats-u. RG.*, xc, 129. [9] See above, 44 ff.

us that the land was divided *secundum dignationem*, i.e. in unequal lots.[1] And finally it is impossible to sustain the hypothesis that the common freemen each possessed only one *Hufe*.[2]

When it was realized that *pagus* and hundred could not be equivalent the theory was advanced that the *pagus* was the result of the settlement of a thousand, which was thought to be a customary German army division. Actually, however, no such thousands ever existed.[3]

But now let us consider the hundred itself, remembering that it appears comparatively late as a territorial division.[4] There is certainly much to be said for the theory that the hundred was originally a union of persons, which came to have a local significance only at a later date and among some but not all the tribes.[5] In support of this theory may be cited the Visigothic law in which the *centena* is a division of the men of military age.[6] It is, therefore, impossible seriously to maintain [7] that the sources contain no indication of numerical division in the German army.[8] Moreover, one of the two passages in Tacitus which are quoted as evidence for the hundred expressly refers to the army organization (*Germania*, c. 6). At the same time I agree with the assumption of various scholars that neither the hundred, nor the long hundred (120), is to be taken literally, but they simply mean any large number. This is indicated by a remark in Tacitus, in chapter 6 of the *Germania: Definitur et numerus: centeni ex singulis pagis sunt idque ipsum inter suos vocantur; et quod primo numerus fuit, iam nomen et honor est.* It is also clear from this passage that the hundred was not at that time equivalent to the *pagus*, but must have been a closer union within, or forming part of, the latter. Even in the later Carolingian period, when the *centena* has attained a local significance, there is documentary evidence that the same word may mean large bands of workers (e.g. people under obligation to do labour services) which did not consist of exactly a hundred men.[9] To this day in Norse the expression *hundmargr* simply means "very many".[10] In the Carolingian even as in the Merovingian period,[11] *centenae* occur which denote a personal union of freemen without any thought of a hundred-district which they might have settled or inhabited as a compact society.[12] In passages where *centena* is at this time used in the sense of a geographical district, it is certainly a subdivision of the *pagus*.[13]

Since, therefore, the use of the term in this later period is not by any means uniform, the two attempts at explanation, the so-called army theory and the *Haufen* theory respectively, may be combined or, better still, allowed to exist

[1] See above, 35 f.

[2] See my *Wirtschaftsentwicklung der Karolingerzeit*, i, 305 f. (or i², 335).

[3] Rietschel, "Die german. Tausendschaft," *Zeitschr. d. Savigny-Stiftung für R.G.*, xxvii, 234 ff., 1906.

[4] See above, 168.

[5] Brunner, op. cit., 162.

[6] See on this point my essay in *Zeitschr. d. Savigny-Stiftung f. RG.*, xxxvi, 15, note 1.

[7] See Cl. v. Schwerin, op. cit., xc, 25.

[8] H. Delbrück, op. cit., 5, considers that the hundred is the same as the Gau, and that it forms the village or the Gau according to the district in which the settlement takes place.

[9] See the passage cited by me, *Zeitschr. f. RG.*, xxxvi, 5 f.

[10] For this information I have to thank my colleague, Rudolf Much.

[11] See the *Decretio Childeberti regis A.D. 596*, chap. 11, MG., capit. 1, 17.

[12] See the passage explained in detail by me in *Capitulare de Villis*, *Zeitschr. f. RG.*, xxxvi, 10 ff. (especially 15).

[13] See Deloche, "Études sur la géographie historique de la Gaule," *Mém. prés. par divers savants à l'Académie des Inscript.*, Ser. ii, 264 ff.

side by side. Even if in early times the hundred was not a local conception, a hundred district, it may, nevertheless, as a union for the army and the *Ding*, or assembly, have had a definite legal significance for military, police, and legal purposes. Further support is lent to this theory by the modern view of the economic structure of the Gau, which even in the time of Tacitus was something more than a settlement of free Germans, Gau-associates (*pagenses*). It had been encroached upon by seigneurial estates, whose free and half-free tenants were of no importance so far as political rights and public administration were concerned. Moreover, private patronage already existed [1] and interrupted direct subordination to public authority. H. Fehr has explained the dual structure of the Frankish union of subjects [2] in his description of the obligation to assist in defence and in justice under Frankish law. The narrower union is the folk-union, the union of free folk-associates who swear the oath of fidelity; it is the union for the army and for justice. Those belonging to it, the *pagenses*, are the freemen living in the Gau, who are not under patronage but are directly under the count. The wider union of subjects is different from this; it is under obligation to the *posse comitatus* and includes all inhabitants of the Frankish kingdom: not only the freemen but also the half-free and unfree persons who do not take the oath of fidelity, and those freemen who are under patronage. The conception *patria*, in the sense of home or fatherland, is connected only with the closer union of subjects, the folk-union. Thus there was in the Carolingian period a narrower personal union within the Gau, which represented public rights and duties, and did not coincide geographically with the Gau, nor with a definite local district within it.

Politically speaking, the hundred was merely a part of the *civitas* without independent significance [3]; for the seat of political authority was the *concilium*, the assembly of all the free folk-associates of the *civitas*. It exercised supreme military authority by deciding on war and peace, and supreme judicial authority by exercising a jurisdiction in unrestricted competition to that of the regular courts.[4] It also chose the officials in charge of the administration of justice in the Gaus and villages. In these assemblies the young men were made fit for military service [5] and thereby their acceptance as administrators of public justice was decided. Since there is a probable connection with Roman conditions, the *civitas* may either be identical with the *Gau* (*pagus*) or comprise a small number of such communities (two or three), in which case this hypothesis also explains the activity of the *principes per pagos vicosque*. For the *vicus* need no longer be regarded as a subdivision of the *pagus*, but may be its central point.[6] v. Schwerin was right in maintaining that the addition *vicosque* is merely an explanation, a more exact definition of place.[7]

The view held by older writers of the economic significance of the hundred can no longer be accepted. An early theory was that the hundred was originally identical with the Mark. Each hundred occupied a large territory, within which Mark-associations seized various districts, which again included various *vici*.[8]

[1] See Chapter IX.

[2] *Festschrift f. R. Sohm.* 1914, 387 ff.; *Zusammenfassung*, 416 ff.

[3] See R. Sohm, *Die fränk. Reichs- u. Gerichtsverfassung*, 6. See also v. Schwerin (Gierke's *Unters.*, xc), 109.

[4] Tacitus, *Germania*, c. 12; see also R. Sohm, op. cit., 4 f.

[5] Tacitus, *Germania*, c. 13.

[6] See above, 166.

[7] Gierke's *Unters.*, p. 93.

[8] v. Schwerin, op. cit., xc, 101.

From an economic point of view the reverse process is more likely. The *vici* were there first, and the Gaus were a territorial congeries of *vici*. The hundreds and Marks probably appeared later as the natural consequence of settlement. This explains much more easily the fact that not only hundred and Mark, but also Mark and village could coincide, so that it was possible for a village to form a hundred.

What then was the state of affairs as regards landed property?[1] To-day, there can be hardly any doubt at all that, at least in Tacitus' time, not only private property in land but also large "manorial" estates were already in existence among the Germans. The land was by no means inhabited solely by Mark-associations of free peasants with equal rights. The economic foundations of the hundred and the inner structure of the Gau must be understood in the light of these facts. Moreover, the land was frequently owned not by the Mark itself but by a group of seigneurial tenants.

The Nomad Theory, by means of which some scholars tried to explain the hundred, is quite untenable to-day. Further refutation is unnecessary here, especially as the hypotheses on which this pasture- or forest-theory was built are no longer tenable. The Germans were not nomads in Cæsar's time, any more than Germany was a land of great forests, as earlier scholars incorrectly assumed.

I agree with H. Brunner so far as to believe that the hundred in this early period was a military and jurisdictional (*Ding*) association. Neither of the passages in Tacitus which may refer to it (*Germania*, c. 6, 12) can be explained as indicating a limited geographical area. The *centeni* whom he mentions are persons elected in the army organization (c. 6) as also in the judicial organization (c. 12); in the former case from the single *pagi*, in the latter *ex plebe*. A. Müllenhoff has already argued, as against the view taken by most historians, that the hundred councillors mentioned by Tacitus in chapter 12 could not have been the inhabitants of a *huntari*, i.e. a district of a hundred *Hufen* with a hundred landowners or heads of households, for in that case where would be the crowd of *plebs* from whom they were chosen?[2] Brunner also stressed the fact that these hundredmen "cannot have been the *Dingmänner* of a geographically limited hundred".[3] Müllenhoff was right in regarding these *centeni* as a committee of a larger union, parallel with the cavalry-*centuria* in chapter 6 of Tacitus. The larger union from which they were taken was, he thought, the *pagus*, which he connected with the thousand. As a matter of fact, judging by the context in Tacitus, chapter 12, this greater union can only be the *civitas*. These hundred councillors stand alongside the *concilium*. The *pagi* (with their *vici*) appear as their subordinate unions. They are taken *ex plebe*, i.e. from the whole people, the folk, as *civitas* has usually been translated.

This committee of a hundred councillors of the people, who stand beside the *principes*, appears to have occupied a different position from that which had been customary up to this time. It has been thought that they accompanied the *principes* on their journeys through the *pagi*, an interpretation obviously indicated by the term *comites*, i.e. companions or following. But are there not strong objections

[1] See Germ. edit., ii[2], 15 f.

[2] *Deutsche Altertumskunde*, iv[2], 253. For this reason also I consider the so-called *Hufe*-theory (refuted by me above, 168) to be untenable, though it has been supported by S. Rietschel in *Untersuchungen z. Gesch. d. german. Hundertschaft*, i (1907).

[3] *DRG.*, i[2], 163.

against this very literal translation? Such a following would certainly have been unusually large for the purpose.[1] Does not the fact that they were elected *ex plebe* show that these *comites* were not a following at all, and is it not more reasonable to assume that their co-operation referred to the councilium of the *civitas*? Then their large number and their election from the people would not be at all strange. There is also positive evidence in favour of this view. Such a committee of councillors is actually known to have existed among some at least of the German peoples in this early period. Cæsar mentions among the Ubii a *senatus* directly connected with the *principes*.[2] This cannot refer to the whole folk-community, but must refer to a committee.[3] Moreover, in Claudian's *Bellum Geticum* a body of councillors is mentioned.[4] Finally, there is a third passage, in Apollinaris Sidonius, where an assembly of councillors formed of the elders is mentioned: *De more Getarum contrahitur; stat prisca annis viridisque senectus consiliis.* [5] Müllenhoff himself concluded "that in the more general *concilia* (*Allthingen*) a narrower circle of eminent men with superior rights was set apart; the people, as a whole, or the community, only agreed to or vetoed proposals".[6] This would agree very well with what Tacitus gives as the task of the hundred *comites*: *Concilium simul et auctoritas.* It would therefore be more correct to describe these comites as assistant judges or *échevins* rather than as a following. This agrees with the verb *adsunt* chosen by Tacitus, whereas immediately afterwards in speaking of followings he uses *sectantur* (c. 13).

Finally, who are the *principes*, with whom these *centeni ex plebe* are closely connected? They have been differently explained. Brunner thought they were chiefs, and, in consideration of the similar nature of the authority wielded by kings and chiefs, he regarded the German *rex* as *princeps civitatis*, the German *princeps* as a small or Gau-king.[7] Other scholars understood this term to denote judges of the hundred or chiefs of the hundred; whereupon it was remarked that there were no Gau-princes.[8] But this is incompatible with Tacitus' account, for he expressly states that these *principes* were appointed at the assembly of the *civitas*. But since, on the other hand, there is no need to regard a hundred-district as a *pagus*,[9] the interpretation of *principes* as judges or chiefs of the hundreds is improbable.

A passage in Cæsar (*BG.*, vi, 23) is decided evidence against this interpretation; it is similar to the one in Tacitus which we are discussing,[10] and may possibly have served as a model for it.[11] It speaks of *principes regionum atque pagorum* and the *regiones* certainly were not[12] smaller districts, perhaps villages, or hundreds, but larger areas. This is probable because *regio* seems here to be superior to *pagus* and elsewhere it also means a superior and larger area.[13]

[1] Waitz, "Uber die principes in der Germania des Tacitus," *Forsch. z. Deutschen Gesch.*, ii, 398, and Thudichum, *Der altdeutsche Staat*, 31.

[2] *Bell. Gall.*, iv, 11.

[3] Müllenhoff, *D. Altertumskunde*, iv², 254.

[4] xxvi, 479:

primosque suorum
consultare iubet bellis annisque verendos
crinigeri sedere patres, pellita Getarum
curia.

MG. AA., x, 277.

[5] *Carmina*, vii, 452, MG. AA., viii, 214.

[6] *D. Altertumskunde*, iv², 254.

[7] *DRG.*, i², 170.

[8] v. Schwerin, op. cit., 90–3.

[9] v. Schwerin, op. cit., 95.

[10] See Müllenhoff, *D. Altertumskunde*, iv², 253.

[11] See Köpke, *Deutsche Forschungen* (1859), 223, and F. Dahn, *Könige*, i, 13.

[12] Thudichum, *Der altdeutsche Staat*, 37.

[13] See Waitz, *VG.*, i³, 257, note 5.

A different translation must therefore be found for the word *principes* in Tacitus. Some scholars have assumed that a republican system existed among the Germans in the time of Cæsar and Tacitus. This, however, is hardly compatible with the accounts of the Roman writers, who expressly mention kings in connection with a large number of German tribes (*Völkerschaften*). An attempt was made to explain this by assuming a territorial difference, for instance that monarchies existed only among the eastern tribes, while the republic was the prevailing form in the west.[1] But this distinction is incorrect; for in Tacitus, on whose information the co-existence of monarchy and republic was assumed, we find evidence of kings among the western peoples, the Frisians and Cherusci, the Bructeri and Sigambri on the Rhine; and among the Batavi at least one *regia stirps* is expressly mentioned.[2] This juxtaposition of republics and monarchies was based in particular on the distinction made between *reges* and *principes* by Tacitus,[3] who on one occasion says of the latter that they were chosen by the folk-assembly (*concilium*)[4]; and further, when speaking of the Frisian *reges*, adds the limitation *in quantum Germani regnantur*.[5] Some scholars incline therefore to regard the monarchy as a "secondary phenomenon", which may have appeared owing to Roman influence,[6] while a few held formerly that in the earliest times there were kings among all Germans, and that more democratic systems found their way later into some of the tribes.[7]

We owe to philology the important observation[8] that according to Tacitus there was no essential internal difference between the principate and the kingship, but that the difference in these Roman terms lay rather in the number of those in authority; in the one case there was the rule of one alone; in the other the rule of several.

To-day there can hardly be a doubt that kingship existed among the Germans from the beginning.[9] We may assume also that among the Anglo-Saxons and northern peoples it was to be found universally in the migratory period, even though here and there its scope might be small or there might be several kings ruling together. The *peod* mentioned beside the king is indistinguishable from the council-assembly or court of the Anglo-Saxon kings.[10]

I am convinced that the chief evidence for the supposed election of the *principes* has been wrongly interpreted. For, according to all that Tacitus says elsewhere of them, the well-known sentence about the appointment of the *principes* at the *concilium* cannot be interpreted as meaning that there for the first time they were freely chosen by the people. Too little regard has been paid to the sense in which Tacitus is accustomed to use words. *Eliguntur* does not mean electing *principes*, but making a choice from among the existing *principes*.[11] The

[1] See Waitz, *VG.*, i[3], 302; Brunner, *DRG.*, i[2], 174; and G. v. Below, *Der deutsche Staat d. MA.*, i, 159.

[2] See references quoted by W. Voss, *Republik u. Königtum i. alten Germanien* (1885), 29 ff., and Erhardt, *germ. Staatenbildung*, 53; see also Müllenhoff, *DAK.*, iv, 185.

[3] *Germania*, c. 7. [4] Ibid., c. 12. [5] *Anal.*, xiii, 54.

[6] See W. Voss, op. cit., 31, and Waitz, *VG.*, i[3], 303; also Thudichum, *Der altdeutsche Staat*, 67.

[7] See Chr. Barth, *Teutschlands Urgesch.*, iv, 238 ff. (1818–1821). Löbell, *Gregor v. Tours*, 2nd edit., 409.

[8] Müllenhoff, *DAK.*, iv, 184 ff., especially 192.

[9] Dahn, *Könige*, i, 24; Waitz, *DVG.*, i[2], 296. See also Cæsar, *Bell. Gall.*, v, 24, 26; vi, 31.

[10] See Chadwick, *The Origin of the English Nation* (1907), 162, 308 ff., 320.

[11] See *Germania*, c. 13: *electorum iuvenum*; c. 15: *electi equi*; c. 17: *eligunt feras*. It should be noted that Cæsar in a corresponding passage (*Bell. Gall.*, vi, 23) says nothing of such an election of *principes*.

choice takes place for the purpose of *jurisdictio per pagos vicosque*. No one can maintain that this was the sole activity of the *principes*. They were not freely elected from the whole mass of freemen, but were taken from the distinguished families. Tacitus himself says so in speaking of the kingship, which we must think of as an elective office.[1] But he makes no essential distinction between *rex* and *princeps*, where he speaks of the rights and duties of the ruler.[2] The king is ruler and representative of the *civitas* (c. 12). Even where Tacitus is speaking of the *comitatus* (c. 13, 14), he mentions only *principes*; the king seems to be included in the term. Even those scholars who regarded the *principes* as characteristic of a republican system had to confess that the difference between the authority of the king and that of the republican *principes* lay "not so much in particular rights, which, on the contrary, both had almost completely in common", as in the hereditary principle as compared with "absolutely free choice of district".[3] This corresponds to the other facts which we learn from Cæsar and Tacitus about conditions of rule among the Germans. Even where they are speaking only of *principes*, as for example among the Batavi, they mention that these are *ex regia stirpe*.[4] Similarly also among the Cherusci.[5] Sometimes several "kings" ruling together are mentioned, as among the Frisians.[6] Moreover, the *principes* are not simply elected by free choice from the common freemen, but are taken from prominent and noble families.[7] On the other hand, where *reges* ruled there was no unconditional inheritance, but the people had the right of choice.[8] Tacitus expressly says: *nec regibus infinita aut libera potestas* (*Germ.*, c. 7).

The guidance and leadership of the *civitas* was originally in the hands of the ruling families of the noblest descent. Even in monarchical states a general peace is not a royal peace, but a folk-peace. It does not depend on the king's command but on the people's will. Thus, the terms for this rule are expressive of its origin and nature. The German *piudans* (folk-leader) is, perhaps, the most descriptive; the ruler is representative and leader of the people, who themselves have the power. And, further, *König* is the lord of the family. I cannot agree that this origin of the word reveals an hereditary principle inherent in the conception[9]; on the contrary, it contains an indication that originally, in the truly primeval period, there was no single rule, but a polycracy of the heads of families.[10] Compare with this the old form *rik*, Gothic *reiks* (guide, leader), which corresponds to the Latin *rex*.[11] Is it not true that both terms express the general phenomenon that in the earliest times the horde, the family union,[12] and then the separate tribe or "folk", represents the political organization? Even in historical times we may observe the rule of a larger or smaller number of kings in different tribes becoming condensed into a larger coherent tribal-union, and even into a single rule, a monarchy, owing to the fusion of these tribes. This occurred among the Alemanni, the Franks, Saxons, Lombards, and probably

[1] *Germania*, c. 7.
[2] *Germania*, c. 11.
[3] F. Dahn, *Könige*, i, 32.
[4] See W. Voss, op. cit., 30.
[5] Ibid., 29.
[6] Tacitus, *Annal.*, xiii, 54.
[7] Erhardt, op. cit., 49 ff.; H. Brunner, *DRG.*, i², 168, note 22.
[8] Dahn, op. cit., i, 32, and W. Voss, op. cit., 45.
[9] Brunner, *DRG.*, i², 165.
[10] See also R. Leonhard, "Urgemeinde und Urfeudalität." *Arch. f. Sozialwiss.*, xliv, 737, note 26 (1918).
[11] F. Kluge, *Etymol. Wörterbuch. Art. Reich.*, 8th edit., 363; Schrader, *Reallexikon*, 442; Müllenhoff, *DAK.*, iv, 187.
[12] On the meaning of this even in the time of Tacitus, see W. Voss, op. cit., 55 ff.

the Bavarians.[1] I cannot agree either, therefore, that the *principes* of that early time were Gau-princes or kings of the *pagi*; they are rather co-princes of the smaller tribes. All the above-mentioned German tribes existing in historic times were certainly not originally national units, but (as the name Alemanni shows), were fused together gradually by a union of different parts and remnants of the peoples.

If, as I have indicated, the connection between *civitas* and *pagus* is to be interpreted less systematically, allowing for the possibility of variations in size and in coincidence, then the vagueness which we noticed earlier in the use of *rex* or *princeps* by Cæsar and Tacitus is explicable. It is certainly no accident that the far-reaching political subdivision among the German tribes of the west and centre coincides with the appearance of the *principes*, who were wrongly connected with a republican system.[2] Brunner emphasized the fact that the political unions of the east were more extensive; and it is precisely there that *reges* are mentioned.[3]

Finally, for a correct understanding of the two conceptions *rex* and *princeps*, it is important to note what has been discovered about the position of the *dux*. *Dux* in general means the leader of the army.[4] It is certainly true that "among the tribes which had several princes a *dux* (O.H.G. *herizoho*) was chosen by the community from the ruling princes in time of war",[5] but this leaves out of account the essential point as to what happened where there was a king. He certainly must, in most cases, though not always, have been the leader of the army, too. F. Dahn has pointed out that "among several local kings" there was an election of a chief, and that after the migrations the king often handed over the military leadership to someone else.[6] Tacitus' own account indicates this possibility, for he clearly ranks the *duces* beside the kings, and emphasizes the different reason of their appointment: *reges ex nobilitate, duces ex virtute sumunt* (*Germ.*, c. 7). Cæsar's description is also compatible with this view.[7]

The *dux* is a leader of the army appointed for a time by the people for warlike enterprises. While he held office he had special powers of command and of punishment; according to Cæsar he had power of life and death.[8] There is no inherent contradiction here with the account given by Tacitus.[9] For Tacitus does not say[10] that the power of punishment in the army belonged to the priests. He merely wishes to emphasize the limitation of even the highest authority among the Germans.[11] The sentence, which he adds in order to explain this prohibition of corporal punishment (so different from the Roman practice), actually contains an indication of the power of command or punishment wielded by the *dux*. Only the execution of this punishment is restricted to the priests. The right of the *dux* is not disputed; but the actual chastisement, which was considered the greatest disgrace among the free Germans, was to be carried out, as it were, by command of the deity, through his representatives. If capital punishment was originally a human sacrifice offered to the gods, and if this and other punishments in the army were inflicted as a religious duty, then Tacitus' statement may easily be explained

[1] See Erhardt, op. cit., 55 ff.; W. Voss, op. cit., 68 ff.; Brunner, *DRG.*, i², 174.
[2] See above, 173.
[3] *DRG.*, i², 157.
[4] See the references quoted by Dahn, op. cit., 1, 64 ff.
[5] Op. cit., 184.
[6] Op. cit., i, 65, note 8.
[7] *Bell. Gall.*, vi, 23.
[8] Ibid.
[9] See Germ. edit., ii², 28.
[10] As Brunner assumed, *DRG.*, i², 185.
[11] *Germania*, c. 7.

without its involving a contradiction of Cæsar's account or a diminution in the power of the *dux*. This infliction of punishment was left to the priests only in order to prevent the practice of vengeance or vendetta, or a claim for *wergeld* against the man who had carried out an execution at the command of the king or the *dux*.

The account given above leads us to a further consideration of the position of the priesthood and its relation to the public authority. Certainly little enough is known. It is usually assumed that in the old German period there was a connection between political and religious authority, and that chief and priest were one and the same person.[1] The chief evidence for this is in Cæsar, who, after describing the Gallic druids and human sacrifices, stresses the fact that the German custom was very different: *Germani multum ab hac consuetudine differunt. Nam neque druides habent, qui rebus divinis praesint, neque sacrificiis student.*[2] This statement was taken to mean that there was at that time no "professional priesthood", but that religious matters were cared for in the family by the head of the household, in the Gau by the ruling princes, and in the state by the king.[3] But in Tacitus we often meet with priests; indeed, he mentions a *sacerdos civitatis*; and these priests play an important part both in the folk-assembly and in war.[4] In order to explain this contradiction, it has been assumed that we have here a later separation of the priestly from the ruling power. This priesthood arose out of the peculiar nature of the political administration in republican states or in those ruled by *principes*, where the lack of an administrative head brought about the need for a high priest to carry out the necessary religious ceremonies in the name of the whole *civitas*, acting, as it were, as a *rex sacrificulus* in the national and sacrificial assembly.[5]

For more than one reason this theory is very improbable. In the first place, where Tacitus speaks of the priests' powers in the national assembly, the *rex vel princeps* is mentioned in the immediate context. It cannot, therefore, be assumed that this was a new development appearing in the state with the rule of the *principes*. Moreover, there appears to be no reason why the necessity for a high priest should have arisen where a king already existed, even if the king himself originally practised these rights.

On the whole I believe that the German priesthood is not such a late institution. The close association, according to Tacitus, of the priesthood with the national assembly [6] and its independent and important position in relation to the king,[7] exclude the possibility that it was a later introduction, or had split off from the political power after the time of Cæsar. "As the sacrifices of the German Gau were based on daily life and were closely associated with the Ding assembly, so also the German priesthood had its roots in daily life and in the laws."[8] Chadwick, writing about the Anglo-Saxons, laid a still stronger emphasis on the religious character of the folk moot, even going so far as to declare that this *concilium* could not have existed unless the tribe had possessed a common

[1] See W. Scherer, *Anzeige f. deutsch. Altertum* iv, 101, note 1; R. Schröder, *DRG.*[5], 31 f. (or 6th edit., 35); H. Brunner, *DRG.*, i[2], 171.

[2] *Bell. Gall.*, vi, 21.

[3] See Schröder, op. cit., and Brunner, op. cit.

[4] *Germania*, c. 7, and 11.

[5] See H. Brunner, *DRG.*, i[2], 171; also R. Schröder, *DRG.*[6], 35 f.

[6] They controlled the *Thingfrieden* and had police-powers, (*ius coercendi*). See also H. v. Schubert, *Gesch. d. christl. Kirche i. Frühmittelalter*, 1921, 11 f.

[7] *Germania*, c. 10.

[8] E. Mogk, *Paul's Grundriss d. german. Philol.*, 1, 1132.

hierarchy.[1] There is also definite evidence of a special priesthood among individual German tribes, such as the Ubii [2] and Chatti.[3]

We must therefore ask ourselves whether the passage in Cæsar really holds the meaning which has been read into it. Have scholars perhaps tried to deduce too much from his evidence? This passage is intended to emphasize the difference between Germans and Gauls. Cæsar stresses the fact that among the Gauls there are only two classes of real importance, the druids and the knights. He describes the very great influence of the former, especially in private life, points out that the Gauls are very superstitious,[4] and indicates the spread of human sacrifice. The Gauls employed the druids for these sacrifices: *administrisque ad ea sacrificia druidibus utuntur*. He goes on to say that the Germans are very different in this respect. They have neither druids to preside over their religious ceremonies nor do they eagerly offer (human) sacrifices. This appears to be quite compatible with the statements of Tacitus, without involving any need for the theories which have just been discussed. If the head of the household had charge of private worship among the Germans (*Germania*, c. 10) it was natural that public religious services should be less in evidence, and that on the whole the priesthood should play a less important part. Tacitus says nothing about frequent human sacrifice. The sacerdotes and especially the high priest (*sacerdos civitatis*) have charge of public worship and of the national shrines. It should furthermore be observed that according to recent scholarship the druids were not an Indo-German institution, but were introduced (among the Celts) from without. They were firstly magicians,[5] and then priests, teachers, and judges, and were of great political importance.[6] Thus Cæsar's description is comprehensible without any necessity for denying the existence of priests among the Germans in early times.[7]

We ought, to-day, to treat with the greatest caution those facts which have been adduced in proof of an original connection between the monarchy and the priesthood. For neither the Merovingian journey with the sacred yoke of oxen, nor the vengeance of the Frisian king for sacrilege, are in themselves priestly functions. These survivals in later law point rather to the fact that the south German kings themselves became objects of worship. The earliest German monarchies are "not to be thought of as everywhere alike, for both the dates and the causes of their appearance were everywhere different". The Scandinavian kings probably performed priestly functions, whereas there is evidence that the Burgundians and Germans did not.[8] Moreover, recent research has produced noteworthy results even in the case of Iceland, which is usually singled out for special reference; the "Godi" were endowed with princely

[1] *The Origin of the English Nation*, 319.
[2] Tacitus, *Annal.*, i, 57.
[3] Strabo, vii, 1, 4.
[4] *BG.*, vi, 16: Natio est omnium Gallorum admodum dedita religionibus.
[5] See J. Pokorny, "Der Ursprung der Druiden," *Mitteil d. Wiener Anthropolog. Gesell.*, xxxviii, 34 ff., and R. Much, ibid., 46. The former essay appeared in an English translation in *The Smithsonian Rapport* for 1910, 583 ff.
[6] See the article "Druidae" in Pauly-Wissowa's *Realencyklopädie d. klass. Altertumswiss.*, v, 1730 ff., 1905, and recently A. Grenier, *Les Gaulois*, (1923), 179.
[7] How little Cæsar's description here corresponds to actual conditions, and how greatly he exaggerates, may best be realized from the statement in the same passage that the only German deities were the sun, the moon, and Vulcan.
[8] K. v. Amira, *Grundriss*, iii, 151 (1913).

power irrespective of the temple priesthood, and there were temple priests who did not possess "Godord".[1]

Finally, we come to the much discussed argument *ex silentio*. The fact that we hear so little of the position of priests among the early Germans cannot, without further examination, be taken to mean that there was no priesthood. We must remember that the sources which shed light on German conditions after Tacitus belong chiefly to a period when the conversion of the German tribes to Christianity had already begun, or was even completed. In 354 Ammianus Marcellinus tells us of augurs among the Alemanni, who had advised against battle.[2] Agathias also speaks of μάντεις who were consulted before the Battle of Capua (554).[3] These were probably priests.

A. Hauck remarked that among the Franks Christianity became the prevalent religion in a comparatively short time, and without any religious upheaval. "There is no trace of the violent upheavals which usually accompany a departure from the old national religion and the adoption of a new foreign one; the history of the conversion of the Franks has no martyrs, either of the Christian or of the pagan faith."[4] He explained this by attributing a rather inferior role to the religious element in the national life. But does he go to the root of the matter? The phenomenon is fully explained by my general theory of the conservatism of the Germans with regard to Roman customs.[5] If the Franks, in setting up their political authority, had to consider carefully the large Roman population of the conquered territory, and if their kings, especially Clovis, actually did so consider it,[6] then this tolerant and conservative attitude[7] explains the fact that there never was any violent clash. On the contrary, the (Frankish) nobility, from whose ranks the German state priesthood was clearly for the most part recruited, immediately stepped into the very advantageous office of the Christian episcopate and found there a rich compensation for what they had lost.[8]

Was there then a nobility in early German times? Some scholars, especially the earlier ones, denied its existence among the Germans in the earliest period.[9] But we have incontestable evidence for a nobility in old German times. Tacitus expressly states that the people appointed their kings from among the nobles,[10] and Cæsar speaks of a nobility among both the Gauls and the Germans. It is true that this testimony was held only to apply to the former,[11] but if *princeps* in Cæsar denotes the nobility without office (among the Gauls[12]), and if the same expression is used for the Germans, it is unlikely that Cæsar meant something quite different in the one case from what he did in the other, especially as he is accustomed to emphasize the differences between the two groups of people. In several passages (e.g. *Bell. Gall.*, vi, 23, and iv, 13) *princeps* must have been used in the sense of a *nobilis*, without reference to office or dignity.[13] Tacitus proves the same point. *Nobilitas*, or noble birth, nobility by descent,

[1] Boden, "Die isländischen Hauptlinge," *Zeitschr. d. Savigny-Stiftung f. RG.*, xxiv, 156 ff., and 163 (1903).
[2] xiv, 10.
[3] *Hist.*, ii, 6.
[4] *Kirchengesch. Deutschlands*, i, 159.
[5] See above, 91 ff.
[6] See Hauck, op. cit., i, 140 f., and chap. iii.
[7] This is expressly emphasized by Agathias, *Histor.*, ii, 1; in speaking of the Franks who marched through Italy in 553 (in contrast to the Alemanni) he says that they spared the shrines and treated them reverently. See Germ. edit., i², 200.
[8] See chap. iii.
[9] See Germ. edit., ii², 37.
[10] *Germania*, c. 7; Germ. edit., ii², 37.
[11] Dahn, *Könige*, i, 44.
[12] Ibid., i, 45; see also Keutgen, op. cit., 81.
[13] Ibid., i, 46 f.

has special privileges in the deliberations of the folk-assembly.[1] The *insignis nobilitas* determines the prestige and dignity of the prince, the *dignatio principis*.[2] It has rightly been concluded from this passage that there were differences of rank within the nobility,[3] for which reason it is impossible to believe that it was based only on relationship with the royal or ruling family. Tacitus also tells us that during the settlement the appropriation of land took place *secundum dignationem*.[4] The greater prestige of the nobility thus gave them a claim to a larger share in the division of the land.[5] It can, therefore, hardly be maintained that there was no favoured class—no legally privileged clan, except the royal or princely family.[6]

Moreover, there are other proofs that the nobility must have been fairly widespread. There is, for instance, the well-known passage about the exodus of youthful nobles into foreign states, if there were too prolonged a peace in their own land.[7] Even if "plerique" means only "very many", it shows that the German nobility was not numerically small.[8] Mention should also be made here of what Tacitus tells us immediately after this passage about the formation of "followings". It has long been agreed that only the king or persons in authority (king and *principes*[9]) had a right to a *comitatus*. We are expressly told here that many noble youths had formed a great *comitatus*.[10] If we consider that these followings had a right to be supported and equipped for war by their lord, a larger *comitatus* presupposes considerable wealth on his part. Only rich and propertied men could have numerous followers. In outward appearance, too, the nobility was distinguished from the mass of the people. Tacitus, in speaking of the peculiar coiffure of the Suevi, remarks that the *principes* had special adornments.[11] He furthermore states that while "the ordinary man does his work in the house without clothing and otherwise carries only a cloak, the richest people have a different costume".[12]

The number of nobles must also have increased, because very early we note hereditary tendencies. This is indicated by Tacitus: *insignis nobilitas aut magna patrum merita principis dignationem etiam adolescentulis assignant*.[13] It has been supposed that the nobility were always decreasing, owing to their warlike occupation, but that no ordinary freeman could rise to their ranks; this artificial theory is not borne out by the facts. Among the Germans a fighting career and personal prowess were pre-eminently grounds for ennoblement.[14] This is proved not only by the passage quoted above about the *comitatus*, but by Tacitus' remarks about the choice of the leader in war, which resulted *ex virtute*.[15] It is also indicated by our information about precedence in the *concilium*, the people's assembly. Next to the *rex vel princeps* came the elders (*prout aetas*), the nobles

[1] *Germania*, c. 11.
[2] Ibid., c. 13.
[3] Dahn, *Könige*, i, 63, note 3.
[4] *Germania*, c. 26.
[5] See above, 35 ff., especially 36, also Müllenhoff, *DAK.*, iv², 369.
[6] See Germ. edit., ii², 38 f.
[7] *Germania*, c. 14: *Plerique* nobilium adolescentium petunt ultro eas nationes, quae tum bellum aliquod gerunt.
[8] Baumstark, in his edition of the *Germania*, 1887, 53, note 9.
[9] Keutgen, *Der deutsche Staat des MA.*, 29.
[10] Magnumque comitatum nonnisi vi belloque tuentur. See Baumstark, op. cit., 54, note 13.
[11] *Germania*, c. 38: Principes et ornatiorem habent.
[12] Ibid., c. 17: locupletissimi veste distinguuntur.
[13] *Germania*, c. 13: for the meaning see below.
[14] See recently H. Fehr, *DRG.* (1921), 18.
[15] *Germania*, c. 7.

(*prout nobilitas*), and also those who had *decus bellorum*.[1] And finally we have the support of the oft-quoted passage about peace-time occupations. Those who were distinguished by conspicuous bravery and prowess in battle rested and hunted, while others worked for them or spent their time in farming.[2] It should be noted, however, that Tacitus immediately afterwards tells us that it was customary for each man voluntarily to bring to the *princeps* presents of cattle and farm produce, which were accepted as an honour, but were also necessary for his maintenance.

To sum up, not only may we say that there was a privileged nobility in old German times, but we may go farther and assert that it had a decisive influence on affairs of state, and indeed, on state policy in general.[3] Cæsar and Tacitus both describe the *principes* as the most important chiefs or great men of the Germans, and Cæsar on one occasion distinguishes them from the *magistratus*.[4] The nobility of the *Urzeit* did actually possess sovereign power. They enjoyed it, however, merely because they provided kings, princes, and priests. If we read the description of actual historical events in Cæsar and Tacitus their abstract account of conditions among the Germans is brought into its right perspective, for in such episodes the *principes* appear even more clearly as the real leaders of the state and the people. The situation is expressed most clearly in Segestes' speech (quoted by Tacitus) at a critical moment to the Roman war-lord Varus: "If the *principes* are removed, then the people (of the Cherusci) will not dare to do anything."[5]

If we accept this conception of the early German constitution, we have a solution of all those difficulties which earlier scholars found when they tried to interpret the passages dealing with the right to possess a *comitatus*. We may regard as discredited the view held by some writers that only the king and the ruling princes had such a right.[6] "Every freeman had the right to take another into his house in order to receive from him agreed and even military service."[7] Certainly the fact that the lord had to provide maintenance as well as fighting equipment necessitated considerable riches on his part. But why should the nobility not have been able to maintain a following, if they had large properties and were in a position to have a number of wives, and were distinguished from the mass of the people by richer clothes and head-dress, especially in the case of the *locupletissimi*, of whom Tacitus speaks?[8] He also points out that it increased a man's reputation and power always to be surrounded by a crowd of especially chosen young men.[9] The *principes* vie with one another in having as large a *comitatus* of vigorous men as possible. It has been assumed by most writers that *principes* here means the rulers at the head of the republican state, and thus they have been unable to avoid the difficulty that Tacitus, earlier in the same chapter, says that illustrious birth or great services rendered by a youth's ancestors will give him *principis dignationem*. But the whole difficulty disappears if we understand by the term the higher rank of nobility. Then we can also understand Tacitus' remark: *nec rubor inter comites aspici*. Why should these youths be ashamed if they had been especially chosen by the ruling prince? It was

[1] *Germania*, c. 11.
[2] See Germ. edit., ii[2], 42 f.
[3] *Annal.*, i, 55: Nihil ausurum plebem principibus amotis.
[4] Germ. edit., ii[2], 43.
[5] See above, 179.
[6] Ibid., c. 15.
[7] *Bell. Gall.*, vi, 22.
[8] Brunner, *DRG.*, i[2], 187, note 32.
[9] *Germania*, c. 13.

another matter if a position had already been assigned to them because of their noble birth or distinguished ancestry, although at their age they had not given evidence of other qualifications for an entrance into public life. It is impossible to agree with the explanation that they were recognized as possible lords of followings themselves[1]; for they were part of another man's *comitatus* and would hardly yet be concerned, or have the necessary means, to form one for themselves.

Obviously all the members of a following were not noblemen or of distinguished ancestry: *nec rubor inter comites aspici.* It is very probable that among them were men of lower birth, who were accepted on account of their personal prowess in war.[2] Speaking of youths of noble lineage Tacitus says: *ceteris robustioribus ac iam pridem probatis adgregantur* (They were placed with experienced men who were physically stronger or more mature). Nor is it consistent with the facts to assume that there existed a fundamental difference between the German following and the late Roman *bucellarii*, in that the Germanic following was entirely aristocratic, while the *bucellarii* were mercenaries; nor is there any justification for the assumption that the following received no pay but only their food from the ruling prince, anything more that he gave to them being a purely voluntary gift.[3] This is definitely contradicted by Tacitus' statements. He speaks of the right of the *comitatus* to equipment, and points out that their liberal maintenance is in place of payment.[4] He adds, moreover, that the lord of the *comitatus* voluntarily made them gifts on campaigns and forays. Inasmuch as the Roman writer is obviously making comparisons with conditions in his own country, he is thinking of the *stipendiarii* as the counterpart of the *comitatus*. The very appellation *bucellarii*, usually interpreted as bread-eaters, emphasizes the fact that maintenance by their lord was the main characteristic of the position of these men. Tacitus also expressly states that in the *comitatus* there were different classes or grades, and the connection in which he mentions this shows that it was personal ability or prowess which could wipe out any existing differences in birth or ancestry.

In addition we ought probably to differentiate between a more restricted, permanent following in time of peace, and a wider and larger one which existed only in war. The former is proved by the statement already quoted, that it added to a man's importance *always* to be surrounded by a great number of chosen youths.[5] In peace they were a mark of distinction, in war a personal protection. The latter fact is proved by the reason which Tacitus gives for the exodus of noble youths when peace lasted too long: *magnumque comitatum nonnisi vi belloque tuentur.*[6] If, therefore, a large *comitatus* were formed in wartime, it is probable that the German *comitatus* also comprised a number of mercenaries specially recruited for fighting purposes. It also appears from the description in Tacitus that these cannot have been unfree men, but were free Germans, who entered a lord's *comitatus* for the duration of the war, without any diminution of their personal standing. On the return of peace, or by voluntary agreement, they could withdraw and join another following

[1] Kauffmann, *D. Altertumskunde*, i, 447.
[2] See the article "Gefolgschaft" by K. Lehmann in Hoops' *Reallexikon*, ii, 132.
[3] Guilhiermoz, *Essai sur l'origine de la noblesse en France* (1902), 33; see also H. Delbrück, op. cit., xxiii, 483 (1921), and 473.
[4] *Germania*, c. 14.
[5] Ibid., c. 13.
[6] See above, 179, note 10.

somewhere else. It is not correct to say that on this point there was an essentia difference between the German following and the Roman *bucellarii* or mercenaries.[1] The fact that the *bucellarii* form a considerable part of their patron's household is not contrary to the usage which prevailed in the German following. I need only remind readers of my previous statements about the maintenance and equipment of these followings by their lords.[2] The *comitatus* did not consist only of noble youths,[3] for Tacitus, mentioning these, also speaks expressly of *ceteris robustioribus ac iam pridem probatis*, who accompanied them. The matter is also made quite clear by the other main source of information which we possess about the German following, viz. the Anglo-Saxon epic poem of Beowulf.[4]

If we remember that in Tacitus the description of the exodus of noble youths seeking foreign service if peace lasted too long at home [5] is closely connected with statements about the *comitatus*, it will be hardly possible to hold the theory that the latter was only a sort of "cadet-school" of transitory and brief duration, in which the young men were trained for war. No, the following was something more than this, and I am convinced that it had a decisive influence on the later development of the German system of government. This we shall now proceed to consider.

In my opinion there were in this development two deciding motifs or influences, first, contact with the Romans, and secondly the appropriation of land or the foundation of German states on Roman territory. In a sense, indeed, the latter is only a continuation and completion of the former, in which I include the period of the great migrations. The lengthy wars waged by the Germans with the Romans for centuries before and after Christ must have had an important effect on German conditions. It was only natural, and indeed it was essential, that the smaller peoples should form larger national units for fighting purposes. The sociological mainspring of action, of which Cæsar speaks, came into force, for the external pressure of war brought about unity and a common plan even where none existed in peace-time.[6] I am not referring here only to the *dux* and to the increase in his power of jurisdiction, which proved to be necessary for military reasons.[7] It went farther than this. The more urgent it was, for the sake of life itself, for the Germans to combine against the Romans, the more impossible it became for their union to be limited to smaller groups or strata of peoples under one leader, and the wider and more general that union was forced to become, leading to greater national alliances. There was also the possibility that an especially successful ruling prince or *dux* might raise himself to a kingship of considerable importance. There are plenty of actual examples of this; one of the most characteristic being perhaps Ariovistus, the *rex Germanorum* [8]; or Marbod, whose rule was not confined to the Marcomanni [9]; or Arminius the Cheruscan, who was accused of having made himself sole king over the various units of the Cherusci and their Gau-chieftains.[10] Further,

[1] See Germ. edit., ii², 47.
[2] See above, 181.
[3] H. Brunner, op. cit., i², 188.
[4] See the article on the "Gefolgschaft" among the Anglo-Saxons in Hoops' *Reallexikon*, ii, 135, para. 8, and Germ. edit., ii², 48.
[5] See above, 181.
[6] *Bell. Gall.*, vi, 23.
[7] Ibid.
[8] See references given by F. Dahn, *Könige*, i, 103.
[9] Ibid., 107.
[10] Ibid., 130.

we have Odoacer in whose case we see very distinctly the union of several German tribes,[1] and Clovis in his war against Syagrius.[2]

But it was not only the wars against the Romans which constantly gave rise to such unions. The great struggle with the Huns had similar results. Ardaric, king of the Gepidi, had supreme command over the tribes which united against them, the Ostrogoths, the Rugii, the Suevi, and the Heruli.[3] Similarly Ammianus[4] and Jordanis,[5] speaking of the Ostrogoths, say that from among numerous kings of allied peoples, certain men came to the fore as virtual leaders of the whole. We also hear of the rule of Ermanric over many warlike tribes of Germania and Scythia.[6] Occasionally it happened that this supreme power was created by civil wars among the German tribes. So it was among the Ostrogoths under Thiudimer after the conquest of Hunimund, who had joined with the Sciri and had then set up a coalition (469) of the Germans of the Danube (Suevi, Rugii, Sciri, Gepidi, and Heruli) against Thiudimer.[7] In the great wars against Romans and Huns it quite often happened that smaller tribes were destroyed, or so decimated that their remnants were absorbed into the other victorious and important ones.

The influence of Rome was not only, as in these cases, indirect and negative, but also direct and positive. On this matter, however, scholars have put forward two important and contradictory theories. Waitz has insisted that contact with the Romans did not lead to a change in the legal and political institutions of the Germans.[8] On the other hand, Heinrich v. Sybel maintained that the connection with Rome, the entrance into the Roman and Christian sphere of culture, formed for the Germans a point of departure for a new political existence.[9]

What have the sources to say on this point, and what do we learn from the historical facts as described by them? Where Tacitus is dealing with the relations between the Marcomanni and the Quadi, he remarks that among them even foreigners rose to the kingship, and that their unlimited power was supported by the lofty authority of Rome. They were helped less by Roman arms than by Roman gold, but the latter proved to be extremely effective.[10] These general statements are borne out by particular examples in the history of the German tribes. I shall mention only a few here. The most important was probably the fact that the war-lord Marbod, having formed an alliance with Tiberius, was neutral during the struggle of the Cherusci under Arminius against the Romans. The war between Marbod and Arminius, which broke out after the battle of Teutoburger Wald, further weakened the Germans' power of resisting the expansion of Roman sway.[11] Similarly, after the Huns had been conquered by the German peoples, led by the Gepidi, Rome, in drawing up treaties with the conquerors, followed the masterly policy of making the various rival tribes hold one another in check in the East.[12] It is obvious that by this alliance with Rome, the development

[1] Dahn, Könige, ii, 35 f.
[2] See Gregory of Tours, *Hist. Franc.*, ii, 27; *MG. SS. rer. Merov.*, i, 88.
[3] Jordanis, c. 50; MG. AA., v, 126; also L. Schmidt, *Gesch. d. deutschen Stämme bis z. Ausgang d. Völkerwanderung*, i, 125 (1910).
[4] xvi, 12, 26.
[5] C. 38, op. cit., MG. AA., v, 100.
[6] Jordanis, c. 23; ibid., p. 88.
[7] L. Schmidt, op. cit., i, 132.
[8] *DVG.*, i[3], 22.
[9] *Entstehung des deutschen Königtums*, 2nd edit., 1881, 242.
[10] *Germania*, c. 42.
[11] See L. Schmidt, *Allgem. Gesch. d. german. Völker bis z. Mitte d. 6. Jahrh.* (1909), 172 f.
[12] See L. Schmidt, *Gesch. d. deutschen Stämme*, 309.

of a strong ruling monarchy was purposely encouraged in order to secure Roman interests. We are actually told that some of these important German kings lived for a time in Rome, and learnt to know Roman ways at close quarters. Velleius tells us that Marbod's rule was not so much like the old German kingship as an imitation of Roman military despotism.[1] So it was among the Cherusci where, after the smaller rulers had disappeared, kingly power was obtained by Italicus, who was summoned from Rome and owed his greatness to Roman support. It was soon realized that his power meant a loss of the earlier German freedom and a Roman form of domination.[2] Tacitus also expressly states that Vannius was given to the Quadi as king by the Romans.[3]

The fact that German army leaders entered Roman service was also undoubtedly important. After their tribes had been brought into the relation of *foederati* with Rome, they often retained military command over them, as in the case of the Batavi,[4] and the royal power was thereby strengthened. In the fourth century Ammianus mentions that kings were already at the head of the Batavi troops who were fighting in the service of Rome.[5] By favouring such military leaders when they rose to be kings, it was possible for the Romans to bring these tribes into subjection to themselves. We see a characteristic example of this in Boiocalus, the leader of the Ampsivari, who had already served under Tiberius and Germanicus. Tacitus considers his chief merit to be that "renowned among those peoples" he brought his tribe under Roman rule after fifty years' service.[6] Again, in a passage describing how the Romans gave some *civitates* in Britain to King Cogidumnus, who was loyal to them, Tacitus gives it as an old political maxim that the Romans used kings as instruments by which foreign peoples might be brought under their sway.[7]

Although it is therefore undeniable that the Romans had a definite influence on the political constitution of the Germans (we learn that they introduced *senatum*, *magistratus*, and *leges* among the Frisians who were their *foederati*),[8] there is as little to be said for v. Sybel's theory as for that of Waitz. In my opinion, v. Sybel was fundamentally wrong in assuming that the old democratic, loosely knit community life lasted among the Germans up to the fifth and even to the sixth century, and that until then there was no trace of a national kingship to guide the general affairs of the *civitas*.[9] The mistake in this theory is at once evident if we examine more closely the effects of permanent German settlement in certain parts of the Roman Empire. This settlement did not take place everywhere simultaneously.[10] We know that great hordes of Germans were already settled in Gaul, in the Upper Rhine, in the territory of the Decumati and in other places during the period of Roman rule, and were, therefore, at first subject to it. We need not assume that on that account they completely lost their own German organization and customs, but strong Roman influence must certainly have been at work upon them. To extend that influence was, in fact, the explicit political aim of the dislocation which the Romans to some extent caused on purpose.[11] Earlier conditions, as described by Cæsar and Tacitus, could not remain unchanged through the

[1] *Hist. Rom.*, ii, c. 108.
[2] See Tacitus, *Annal.*, xi, 16.
[3] *Annal.*, ii, 63.
[4] Tacitus, *Hist.*, iv, 12.
[5] xvi, 12.
[6] *Annal.*, xiii, 55.
[7] Agricola, c. 14: Ut vetere ac iam pridem recepta populi Romani consuetudine haberet instrumenta servitutis et reges.
[8] Tacitus, *Annal.*, xiii, 54.
[9] Op. cit., 295.
[10] See above, 50.
[11] See above, 51.

centuries. But here, also, we should assume that there was a gradual transition. When, in the later period, the Germans founded definite states on Roman territory, these were no more that a completion of the Roman process of disintegration, in which the Germans themselves had played a considerable part, and which was largely assisted by their earlier admission into Roman organizations. They broke down the old system, but not in any sudden access of strength; their strength had developed earlier and had matured slowly. Moreover, even now there were very considerable differences in development. In a number of these new states, as for example in Italy from the time of Odoacer, and among the West Goths and Burgundians, the land was definitely shared with the Romans.[1] Other peoples—such as the Burgundians—were actually called upon by the Romans for protection.[2] The land was shared out according to the Roman billeting system.

In all these new states we find a kingship, but it differs from the old German kingship as described by Tacitus, both in size, for it includes great stretches of land, and also in the population subject to it. Not only did that population by now include numerous Romans, but the Germans themselves came from many different tribes. This must have brought about important changes in political structure. The folk moot which in the relatively small districts of the earlier tribes (*civitates*) was the supreme political authority, must now have been overshadowed by the increased military power of the ruling prince in these new and extensive territories.[3] During the wars and migrations there must have been an increase in his following and in the number of unfree men, the spoils of war, under his immediate control. Now, owing to land-appropriation and actual colonization, much larger stretches of land must have come into his possession. As the oldest of the so-called Folk-Laws, especially those of the Burgundians and Visigoths, show, he could not only give away the *sortes*, or land shares, accruing to the free members of the tribe under the *hospitalitas* arrangements, but also grant land of his own as a special grace and favour (*ex largitate* or *munificentia regis*).[4] Similar grants are found in other German tribes, where we have no knowledge that the land was shared with the Romans, as, for example, among the Franks.[5] How was it possible? It has been variously explained, principally by the suggestion that the king looked on himself as the rightful successor to the banished authority of Rome.[6] But in this matter distinctions must be made, especially among the Franks. The Frankish monarchy was founded by the Salii, who occupied Toxandria as early as the fourth century and retained it even after their subjection by the Emperor Julian, apparently as Roman *foederati*.[7] The supremacy of the Roman Empire continued, however, almost throughout the fifth century, in the course of which the development of the Frankish kingdom was completed. The Salii continued to serve in the Roman army, and King Chlogio and Childeric (d. 481), the father of Clovis, fought under Roman leaders against the Huns (451) and the Visigoths. Even when they were wrongly described as Roman *magistri militum*, as in the case of Clovis,[8] it is quite impossible to deny, as Waitz does, that Rome influenced the internal condition of the people and the position of the king.[9]

[1] See above, 93 ff. [2] See above, 99 ff. [3] See H. Fehr, *DRG.* (1921), 31.
[4] See above, 98 and 100. [5] See above, 105.
[6] See Eichhorn, *Deutsche Staats- u. RG.*, i, 60 (or 1^5, 158); also Gaupp, *Die german. Ansiedelungen u. Landteilungen*, 185; P. Roth, *Gesch. d. Benefiz.-Wes.*, 73; H. Brunner, *DRG.*, i^2, 293.
[7] See above, 103.
[8] See Waitz, *VG.*, i^3, 34, note 1, and 38, note 2.
[9] See the article "König" by O. Seeliger in Hoops' *Realenzyklopädie d. german. Altertumskde.*, iii, 71 (1915–16).

We have extraordinarily little information about the beginnings of the Frankish kingdom, our only source being Gregory of Tours. Now Gregory wrote his book a century after the formation of the monarchy by Clovis and was himself a Christian bishop, who knew little about the early history of the Franks and naturally interpreted it in the light of his own catholic and episcopal ideas, which were in the direction of an absolute monarchy. His exposition, therefore, requires critical examination. The amalgamation of a number of quite independent tribes into one single people, subdivided into two large geographical groups, may be regarded as complete after the first quarter of the fifth century when the Franks were thundering at the gates of Gaul.[1] At the end of the fourth century we hear of kings among both Franks and Alemanni.[2] Clovis' work was magnified and his merits much exaggerated by the Catholic clergy, on account of his conversion to Catholicism. Their picture has seriously obscured and overshadowed all events before his time, and anything that can be learnt of them is, therefore, worthy of especial note. Childeric, Clovis' father, had already waged war against the Visigoths, the Saxons, and the Alemanni, and had received new grants of land from the Romans in return; he had also attempted to overthrow Aegidius, the representative of Roman rule in Gaul. Thus he had already laid down the lines which the Frankish policy of expansion was to follow. We must not forget that when Clovis succeeded his father, he was only a boy of fifteen. v. Sybel, in accordance with his general theory, regards Childeric as no more than a Frankish district-king,[3] who in his own land was merely the eldest of an unimportant family, and owed his rise solely to the fact that he was in Roman service.[4] Junghans opposed this view, and pointed out that Childeric fought not as an official but as an ally of Rome.[5] Moreover, we must not forget that other Frankish tribes had meanwhile advanced to the left bank of the Rhine as far as the Maas, and had occupied the Moselle country. Thus the unification of all these kindred peoples, and the amalgamation with other German tribes after Roman rule had been finally overcome, were not solely the work of Clovis; they were also the final fruits of a heritage which he had taken over from Childeric, just as the fate of Syagrius had already threatened his father Aegidius in Childeric's time.

Thus the foundation of the Frankish state was a gradual process. It was not complete in Childeric's time, but he showed his successor the way in which he could become independent of Rome. Clovis also at first clung to the old alliance with the Romans; but he reaped where his father had sown, and where the latter had not yet been successful, the vigour of youth won the day. There were still numerous kings ruling over districts and small tribes among the Franks, but Clovis abolished them by force and established a strong unified monarchy. This feat has caused much surprise and admiration, but it must be remembered that something similar had already been accomplished among the Alemanni, where in little more than a century (357–486), fourteen to seventeen district and tribal kings had had to give way before a single monarch. Clovis seems to have shown the political instinct so often found in great men, in turning to his own advantage the general conditions and tendencies in the smaller states, particularly Chararic's

[1] W. Schultze, *Deutsche Gesch.*, ii, 47.

[2] See Gregory of Tours, *Hist. Franc.*, ii, c. 9, for the information which he took from the historical work of Sulpicius Alexander.

[3] v. Sybel, op. cit., 296.

[4] Ibid., 301.

[5] *Gesch. d. Könige Childerich u. Chlodovech* (1857), 18.

neutral position in the fight against Syagrius. His cunning and murderous actions could not have reached the goal so quickly and without resistance, if the people's necessity had not aided and abetted him.[1] We can hardly speak of a definite or comprehensive political programme drawn up by Clovis, nor was the union of all the Germans on the right bank of the Rhine due to such a programme, for he did not anticipate the division of his kingdom among his sons. Thus we must not overlook the fact that the single unified monarchy was only a passing phenomenon. German constitutional ideas soon gained the upper hand again. Therefore it is impossible to share v. Sybel's opinion that the Merovingian monarchy was on the whole a product of Roman or provincial tendencies.[2] v. Sybel himself had to acknowledge that the essence of Clovis' military power and the chief source of his strength lay in the forces that flocked to his flag from his own districts. Gregory of Tours' oft-quoted story about his behaviour in the allotment of booty at Soissons, even if it be apocryphal, shows the general feeling of the people; the king, it is true, has the leadership, but his will is subordinated to the superior authority of the army.[3]

I believe that the official dignity of the Roman consul, which Clovis caused to be conferred on himself in 508 by Constantinople, was not the main cause of his power, but was only an outward acknowledgment of it by the Eastern emperor, an acknowledgment which was valuable to him on account of his many Roman subjects. The power itself was already there and grew out of the German military kingship which took shape, above all, among the new German tribal unions during the migrations and the struggle against Rome. This process could have been assisted not only by the wars against Rome but also by alliance with her, but it was caused by neither. In the last resort its origin is to be found in the gradual growth of the power of the German peoples at the expense of Rome, which was realized through their consolidation in the new tribal formation.[4] The relation of *foederati* to Rome, like the bestowal of Roman military titles, was won or granted where military prowess already existed and where individual princes or district kings had already come into prominence. When the sources tell us that kings had been given by the Romans to certain German tribes, (this is said even of Stilicho and the Franks),[5] it is not to be supposed that the kingship was at that moment founded by them, but rather that German army-leaders who had already attained power, now obtained support and protection from the Romans against native rivals.[6] Not only the struggle against Rome, but also the alliance with Rome, made possible the development of the monarchy and the removal of rival district-kings.

Thus, kingship over a Gau or district was a preliminary stage in the transition to a single monarchy. Junghans was right in contending that for Childeric the kingship of the Gau was the main pivot of all the undertakings for which he brought the Franks together from districts which were not immediately under his rule. At their head he took part in the wars and movements which shook Gaul

[1] Dahn, op. cit., ii, 79. [2] Ibid., 306.

[3] W. Schultze, *Deutsche Geschichte*, ii, 57.

[4] This is seen very clearly in the latest work of L. Wirtz on the union of the Frankish tribes of the Rhineland, *Bonner Jhb.*, cxxii, 187 ff. (1912).

[5] See Claudian, *De consulatu Stilichonis*, i, v. 237; *Francia reges quos dederis.* MG. AA., x, 197.

[6] Thus, in place of the two kings, Marcomer and Sunno, the leaders of the Frankish war-party, Stilicho had other princes who were loyal to him chosen as kings. Op. cit., v. 240 ff.; cf. F. Dahn, *Deutsche Gesch.* (Heeren-Ukert), ii, 14 (1888).

at that time. He stood in the looser connection of an ally with the Roman rulers.[1]

In support of his Roman theory v. Sybel brings forward the case of the Anglo-Saxons and the Lombards, and at once gets into considerable difficulties,[2] for, among the Anglo-Saxons development was slower and less complete than among the Franks and Goths. A large number of small states under independent kings continued to exist, and it was only in the seventh century that brave and fortunate rulers succeeded in gaining sway over larger territories, until finally the victories of Wessex united all the Germanic land on the island into a single whole.[3] These facts indicate that in England, too, there was a transitional stage between the old democratic constitution and the monarchy, i.e. the small or Gau kingship is found here also, from which the monarchy subsequently developed, owing mainly to the superior military prowess of individual Gau-kings.[4] Here, too, the importance of the German following as a contributory cause of this development is clear. Bede says that King Oswin was so famous that the most prominent men pressed from all sides into his service.[5]

Von Sybel's theory derives even less support from the history of the Lombards than it does from that of the Anglo-Saxons.[6] For among the Lombards concentration of power in the hands of one ruler, combining the rights of a tribal prince and a king, did not follow as a result of holding a Roman office, as it did in the case of the Ostrogoth Theodoric. The official title of the Lombard ruler was *rex gentis Langobardorum*, and no connection with Rome is expressed by it.[7] Even though Roman influence in general was strong among the Lombards in Italy,[8] the German basis of the kingship is obvious. Although it was already hereditary, the king was confirmed in his power by election and was raised upon shields in the army assembly; this practice was followed even when a father took his son as co-ruler during his own lifetime. The Laws of Rothari, the Lombard judicial code, were formally adopted and confirmed by the assembly of fighting-men.[9]

Let us now examine what is said to have been the second cause of the development of the monarchy among the German peoples, namely Christianity or, rather, the Roman Church. In 1848 Kemble pointed out the support given by the clergy to the kingship, influenced as they were not only by their Roman conceptions of emperor and pope but also by Christ's teachings about submission to the powers that be.[10] This is certainly correct and its consequences are not to be underestimated, but it is far more questionable whether it is consistent to conclude that monarchies were thereby brought into existence as something new and fundamentally different from the old German constitution. Kemble himself merely assumed that the introduction of Christianity, which, like the episcopal constitution, had accustomed the people to a more centralized and exclusive use of authority, helped to make the new system, the monarchy, a lasting one. We must not overlook the fact that in seeking to explain the position of the over-king (Bretwalda) he expressly stated that it was not influenced by or imitated from the church system.[11]

[1] Junghans, op. cit., 19. [2] See Germ. edit., ii[2], 62. [3] Ibid., 337.
[4] See also Chadwick, *The Origin of the English Nation* (1907), 144 ff., 178 ff.; and his *The Heroic Age* (1912), 376 ff., and v. Schwerin, art. "König", B. in Hoops' *Reallexikon*, iii, 74.
[5] *Hist.*, iii, 14, para. 189; *ad eius ministerium nobilissimi concurrebant.*
[6] Cf. Germ. edit., ii[2], 63 f. [7] Hartmann, *Gesch. Ital.*, ii, 2, 30.
[8] See above, 93 ff. [9] See note 7.
[10] *The Saxons in England*, n. edit., ii, 26 (1876). [11] Ibid., ii, 15.

It is probable that in this matter scholars have been too much influenced by the impression given by Frankish conditions, especially under Clovis. The Church supported him only because it ardently desired him to spread Catholicism among those neighbouring states which clung to Aryanism.[1] After his death, Frankish history shows how little the Church was concerned methodically, and in all circumstances, to further the development of a strong monarchical power. In spite of its influence it did not prevent the partition of the kingdom into four and the abolition of the monarchy, any more than it did so among the Lombards under the Catholic Aripert. The position is even plainer in the case of the Visigoths. Here the Catholic Church, i.e. the bishops, who had gained much power in the state after King Recared's conversion (587), vigorously supported the rebellion of the Gothic Count Sisenand against King Swinthila, when the latter attempted to limit the power of the nobles, which had already become a danger to the monarchy, and to set up a strong royal rule (631).[2] Later King Kindasvint, when making a fresh attempt of this nature in 641, again found the Church against him, although he was himself a zealous Christian.

The political position of the Church is obvious. It supported kingly authority wherever, and in so far as, it hoped for the increase and expansion of its own power therefrom; but if a strong monarchy threatened its power with diminution, the Church did not hesitate for a moment to attack that monarchy. In justification of this it was easy enough to produce apt texts from the Bible and from Christ's teaching, and to use them successfully. The call to reverence the law, warnings against tyranny and sinful lust for power, and the summons to the Church to protect the poor and oppressed, were used for this purpose. We find these arguments advanced by the fourth council of Toledo in 633, after the deposition of King Swinthila, to justify the action of the Church.

The monarchy, as we have already pointed out, was also in existence among the Anglo-Saxons in the fifth century before the time of Augustine.[3] On the other hand, the expansion of the Roman ecclesiastical system and ecclesiastical unity in the seventh century did not immediately lead to a single consolidated monarchy. There were seven or eight smaller kingdoms in existence for several centuries, and unity did not come until the tenth century. One of the finest historians of the English constitution, Bishop Stubbs, has stated that this political unity cannot have been due solely to the unity of the Church, which may have helped but cannot have caused it.[4] Indeed, he considers it a mistake to say that clerical influence was one of the chief reasons for the increase of kingly power.[5] Union came gradually, after several attempts at it in Kent, Northumbria, and Mercia had come to grief. The West Saxon dynasty succeeded in abolishing the smaller kingships because of its military success against the Danes, who had conquered the other kings.[6] A military organization, the necessity for maintaining it permanently on account of constant threats of war from without, above all the importance of an experienced and well-armed following, these were decisive factors in developing a superior monarchy, which began at the end of the sixth century. Moreover, the episcopal rule of the Church, even though a monarchical system, would lead, if imitated, to a co-ordination of the rulers of small districts

[1] See below, chap. viii, *The Church*.
[2] Dahn, *Könige*, v, 186 ff.
[3] See above, 188.
[4] *The Constitutional History of England*, i[3], 170.
[5] Ibid., 178.
[6] Ibid., 174.

rather than to rigid centralization under one strong sovereign power. I need only refer to the influence of the late Roman *civitates* in Gaul [1] and to their importance in the development of the episcopal dioceses. This episcopal system would make a much better model for a Gau and local kingship than for the universal power of a consolidated monarchy.

To review our conclusions: these foreign influences, Roman and ecclesiastical, were undoubtedly instrumental in changing the form of the German constitution, and we must not underrate their importance; but they were not the fundamental cause of the change. They helped and furthered tendencies which grew out of the old German order itself, according as great and recent exigences (such as defence against foreign aggression and the safeguarding of the areas of settlement) inevitably called them into existence, and a transformation in the distribution of power and authority took place. The practical conclusions drawn by the Germans from their experience in the service of the Romans and as their allies for centuries, resulted in the growth of new political forms. Those years of apprenticeship and of migration pointed the way to political reorganization and at the same time assisted it; but they were neither its cause nor its motive force.

We must examine another reason given for the change. The new nobility, whose superior rank was due to close personal contact with the king, has been regarded as the chief means by which he relegated the old freedom of the people to the background; it has been considered not merely the consequence but the cause of a stronger kingship.[2] With the aid of this faithful and constantly armed court nobility, the king could often act quickly and energetically, in war and in peace, without first having to gain the consent of the ponderous folk moot, which, in his extended kingdom, was not easily got together nor easily conciliated. But this theory revolves round a new nobility, without explaining how one had arisen. Furthermore, it assumes that an expansion of the area of the kingdom had already taken place. But both of these are new phenomena, which are generally held to have appeared after the consolidation of the monarchy. Nor does it enlighten us as to how the king managed to do away with the old limitations (especially emphasized by Tacitus) of the Germanic kingship.

Some recent scholars, laying great stress on Roman influences, have argued in favour of a complete reorganization of the old German constitution by the Merovingians, and in particular by Clovis, resulting in a freeing of the kingship from the folk moot and exaltation of the ruling personality. They hold that the new king was an absolute monarch, ruling without the old democratic limitations and without the co-operation of the people,[3] and that in the Gallo-Roman population he gained a class of subjects who were accustomed to the oppressive Roman rule, with its unlimited authority. This reacted on the original Frankish lands and led to an extension and consolidation of the royal power.[4] But with the information now at our disposal about conditions in the late Roman period, especially in Gaul, we know that the assumptions from which earlier scholars proceeded are not valid. It is not true that the main body of the Roman population was immediately under the emperor and directly ruled by him. Public authority had already become to a great extent feudalized by the great landed proprietors

[1] See below, Chapter viii.
[2] See F. Dahn, *Könige*, i, 37.
[3] See Germ. edit., ii[3], 70.
[4] H. Brunner, *DRG.*, ii, 8.

(*potentes*) under whose oppression even the freemen suffered.[1] According to the unanimous testimony of various contemporary writers in Gaul, Spain, and Italy, the great contrast between Roman and German conditions actually led Romans to take refuge with the Germans, because there at least their freedom was assured and they were justly treated.[2] The real situation is the opposite of that envisaged by Brunner. The Gallo-Roman population tried to free itself from the oppression under which it suffered and it gained a position of greater freedom under the new German rulers.

I have shown above how the main lines of Clovis' policy were really decided by the previous Frankish development under Childeric, which has never been sufficiently taken into account. Recent research has tended more and more to show that Clovis was really conservative in his attitude to the Gallo-Roman population.[3] Now that his kingdom was becoming so extensive and the number of his provincial and non-Frankish subjects was increasing, could he, without endangering his own future, have abandoned the real foundation of his power, which was based on his earlier position among the Franks? Could he have abolished those German conditions which had appeared advantageous to the Romans themselves and had been desired by them? It is, at any rate, certain that if Clovis had really transferred the Roman system to the Germans, the change would have been to the advantage less of the royal power than of that of the great landowners (*potentes*) who, as later history shows,[4] considerably limited the kingship. Clovis and his immediate successors did not depart very far from the old (German) conditions.[5] The powers of this new monarchy had really existed from the beginning and earlier conditions had not yet been abolished under Clovis.[6] The assumption that the people had no share in law-making is as mistaken as the exaggeration of their active participation by Sohm, who went so far as to assume a dualism in Frankish law (popular law and royal law).

In this connection I would emphasize the fact that the amalgamation of the different Frankish tribes did not depend only on the will of the new monarchy or its military power, but on a free decision by the people itself. The entrance of the Ripuarii into the alliance was formally decided by their own assembly. Gregory of Tours, with his complete failure to comprehend the Frankish law of blood fued, sees nothing but violence and cruel caprice on all hands, to an extent which is historically quite improbable[7]; yet we learn from his account that Clovis, after the assassination of the Ripuarian rulers (Sigibert and his son) thought it very important that he himself should be properly elected by the people, in the old German fashion, and should be recognized as king. He called together the whole Ripuarian folk, declared his innocence of the murder of their kings, which he expressly stated to be a crime and suggested that they should enter his protection. Their concurrence in the bestowal of the kingship upon him was shown by raising him on the shield, and by the unanimous vote of the assembly.[8] Here we see repeated

[1] See generally Beaudouin, "Les grandes domaines dans l'empire Romain," *Nouv. Rev. Hist. de droit français et étranger* (1897 and 1898), also Kroell, *L'Immunité Franque*, 14 ff. (1910); also above, 135 ff.

[2] See above, 91 ff.

[3] W. Schultze, op. cit., 59 f.; see also A. Hauck, *Kirchengesch.*, i², 105.

[4] See below, chap. vii.

[5] Waitz, *VG.*, iii², 144.

[6] Seeliger. See his article, "König," in Hoops' *Reallexikon*, iii, 71.

[7] See the apt remarks of H. Brunner, *DRG.*, ii, 9.

[8] *Hist. Franc.*, ii, 40.

exactly the procedure described by Tacitus. Perhaps we ought to note that even according to Gregory of Tours Clovis speaks only of a *defensio*, a defensive alliance entered into by the Ripuarii.

The important point is that the ruling power of this new monarch reflects in all essentials the old rights of the German ruler. It is essentially military and judicial. The army-assembly, the *Märzfeld*, was retained under Clovis. It is true that the king's power seems to have been increased by recent developments, by frequent wars, and the expansion of his territory, but the co-operation of the people has not been entirely abolished.[1] It still appears in the formalities by which full freedom was given; even in the eighth century this was done in the king's presence, but not only by him (as it was later). And even if this interpretation of the Malberg gloss be incorrect and if the king were not legally obliged to summon the folk moot,[2] it is probable that in actual practice emancipation usually took place on the occasion of an assembly, because in this way full freedom could be given and the freed man could enter into the inner circle of freemen.[3] So it was also in judicial affairs. The *mallus*, the judicial assembly of the people, forms the legal side of the constitution.[4] According to the Salic Law, however, certain legal questions (for example, *Affatomy*) had to be dealt with *ante regem aut in mallo publico*. We see clearly how first the king co-operated with the popular judicial assembly, and then gradually the rights of the latter passed over to him, until finally he had independent judicial rights without the co-operation of the people. Nevertheless the old German moot of the *civitas* lived on in the tribal moots and then in the Frankish *Märzfeld*.[5] It is, indeed, true that the self-determination of the people was lessened, and that the right of making decisions changed into the less important "acclamation", and was finally replaced by a solemn proclamation of fixed decisions to the people. The duties of co-regency carried out first by the German folk moot, then by the tribal moot, and finally by the Frankish *Märzfeld*, were transferred to the *Optimates*, the former council of the moot. But the historical connection between the later aristocratic Reichstag and the earlier folk moots was preserved. The *optimates* were considered to some extent to be representatives of the people; this is obvious from the fact that the terms kingdom, *Optimates*, and Franks were used indiscriminately for the same thing.[6]

These theories are fully supported by the facts which we have already established. For in early German times social ranks *secundum dignationem* existed; the nobility had a privileged position in public life, especially as regards political leadership in the folk moot, of which the centre of gravity lay in the princes and elders rather than in the people itself.[7] Even where the royal laws mention only the co-operation of the great men, this does not mean that the people present at the *Märzfeld* took no part at all in the proceedings.[8] The position was much the same even in the earliest German moots, i.e. the people did not take an active part in the discussions but rendered more or less passive, though by no

[1] H. Fehr, *DRG.* (1921), 38 f.
[2] See H. Brunner, "Die Freilassung durch Schatzwurf," *Aufsätze für G. Waitz*, 55 ff.
[3] See Tacitus, *Germania*, c. 13; see also Fehr, "Landfolge u. Gerichtsfolge i. fränk. Recht." *Festgabe f. R. Sohm*, 1914, 387 ff., especially 409.
[4] Sohm, op. cit., 63.
[5] C. Seeliger, op. cit., 35 f. and Germ. edit., ii[2], 75 f.
[6] Ibid., 37.
[7] R. Schröder, *DRG.*[5], 156, also H. Schreuer, "Das deutsche Königtum." *Schmoller's Jb.*, xlii, 61, note 1 (1918), and E. Schwind, *Wiener Rektoratsrede*, 1919. Keutgen, op. cit., 27.
[8] Schröder, *Histor. Zeitschr.*, lxxix, 230 (1897) with reference to the protocol of King Liutprand's decrees of 713 and 720.

means superfluous assistance, by ratifying the decisions presented to them by the council (*Vollbort*).

As a matter of fact, Tacitus' account of the procedure in the old German assembly tallies with this view. We have already seen that the oldest and most distinguished men had the right of speech after the king.[1] The people itself assented or dissented. Further, Tacitus expressly says: *de minoribus rebus principes consultant, de maioribus omnes, ita tamen ut ea quoque, quorum penes plebem arbitrium est, apud principes pertractentur.*[2] In much of the business, therefore (for there were certainly many more small matters than great), the people were not brought in at all, and even when they were, there was a previous discussion among the princes and the nobility, so that the majority of the people had only to accept or reject their proposals. In this connection reference may be made to the account of the origin of the *Lex Salica*, given in the long preface to that code. Four *proceres* were elected by the Frankish people to draft it; it was exhibited in three moots; and according to the legend the law was passed by the Frankish people in a full moot.[3]

The view that the *proceres* or *optimates* who took counsel with the king are always to be regarded as his servants, and that their co-operation was part of their service and not a decision of the folk moot, is mistaken.[4] It is equally impossible to consider the *potentes*, who are so important in Merovingian times, as the servants of the king.[5] These rich and noble landowners were certainly not all in the royal service; and, moreover, they cannot be described as arising later, for they were already in existence in late Roman times and we continue to find them during the following period.[6]

Finally another consideration arises in connection with the following. The *proceres* and *optimates* of the Frankish period, who appear in the folk moots as the king's counsellors, have been understood by those very writers who deny their co-operation with the king to be the *antrustiones*,[7] i.e. the king's following itself. Moreover, the king's counsellors, who, as some scholars say, did not represent the people, were the army men and the *sui*.[8] Both groups correspond to the followings of the German period. But if we compare what Tacitus tells us of the important political influence of great and powerful lords of the *comitatus* in the state [9] (on occasion they even decide declarations of war), it is clear that Frankish conditions in the royal period are only a direct continuance of the old German development. For who could then maintain such a large following? Only the king, the nobility, and the great landowners.[10]

As among the Franks, so also among the other German tribes, we find the people co-operating with the king in the discussion of public affairs. I am not referring to the Alemanni [11] and Baiuvari,[12] whose laws were made in ducal tribal assemblies with the co-operation of the people, because these arose later, in the eighth century. But, as we noticed above, R. Schröder proved this co-operation

[1] See above, 179 f.
[2] *Germania*, c. 11.
[3] See R. Sohm, *Reichs- u. Gerichtsverfassung*, 51 ff.; see also Brunner, *DRG.*, i², 435, and R. Schröder, *Zeitschr. f. RG.*, N.F., 4, note 218.
[4] See Germ. edit., ii², 77.
[5] Ibid. and Waitz, *VG.*, ii, i², 364.
[6] See above, 136.
[7] W. Sickel, "Die Enstehung der frank. Monarchie," *Westd. Zeitschr.* i, 226; ii, 310.
[8] Ibid., i, 227.
[9] *Germania*, c. 13.
[10] See above, 180 f.
[11] See H. Brunner, *DRG.*, i², 451.
[12] Ibid., i², 457.

in the case of the Lombards.[1] Moreover, besides royal laws made by the ruler alone, there were also laws agreed to by the people.[2]

An argument *ex silentio* cannot be pleaded in the case of the Visigoths, because the earliest laws of King Euric have come down to us only in fragments and without the beginning, where we might have expected to find some information about the co-operation of all or some of the people.[3] In any case, Euric's successor, King Alaric II (485–507), caused a commission of men learned in the law to put together the laws intended for the Roman provincials (*Lex Romana Visigothorum*) and in 506 he submitted their work to an assembly of bishops and provincials for their approval.[4] Moreover, we have evidence of an army assembly here in 455, which discussed political questions under the king's leadership.[5] The army likewise influenced Alaric II's actions in the battle of Vouglé against his will,[6] and in 506 an *assensus suorum totius regni* to his financial demands is mentioned.[7] The folk army also sat in judgment, for instance, on Paulus.[8] After the acceptance of Catholicism, the influence of the councils became very important and in Spain, as we know, important laymen also took a share in their deliberations, so that they really became national assemblies.[9]

Among the Burgundians there is unmistakable evidence of the co-operation of the chief men, both in law-giving and in other public affairs. The fact that at times only the counts and not the optimates are mentioned does not prove that this help was merely given as a royal service, for cases may also be found where the counts are not mentioned and the *optimates* are.[10] Moreover, the *prima constitutio* especially mentions not only the consent of the counts, but also the fact that this law was the result of the general consent of all.[11] Sécretan concluded from this that the royal power was limited by the assembly of great men who represented the nation before the king, and that the consent of the whole nation was considered necessary.[12] This is also borne out by the fact that the conclusions of the assembly of Ambérieux (501) which were added to the Burgundian Law were settled by the king, according to the preamble, in *conventu Burgundionum*.[13] In the text itself, however, only negotiations with the counts are mentioned.[14] Obviously these negotiations were conducted, as in German times, according to Tacitus, but the princes or the nobility and then the folk moot gave its consent to the decisions which had been reached.

A similar procedure may be observed among the Anglo-Saxons. It has been shown by Chadwick, who is especially concerned with the earliest national councils,[15] that there is proof of the co-operation of *principes* as early as Hlothar (679). He has proved that among the Anglo-Saxons, especially in Northumberland, at this period, *principes* and *optimates*, *sapientes*, *maiores natu* actually formed

[1] See above, 192.
[2] Sickel, op. cit., ii, 319.
[3] See Zeumer *in Neuen Archiv.*, xxiii, 471.
[4] Ibid., 374.
[5] See *Apollinaris Sidonius*, vii, 452; MG. AA., viii, 214.
[6] Procopius, *Bell. Got.*, i, 12.
[7] *Aviti Petracorici eremitae vita Acta SS. 17. Juni*, tom. iii, 361 f.
[8] *Juliani Tolet. iuducium in tyrannos*, Bouquet, *Recueil des Historiens des Gaules*, ii, 718 C.
[9] See Chapters VII and VIII below.
[10] See the beginning of the *Lex Hundobada*, MG. LL., sect. i, 2, 29.
[11] Op. cit., 34.
[12] "Le premier royaume de Bourgogne," *Mém. et docum. publiées par la Soc. d'Hist. de la Suisse Romande*, xxxiv, 136 ff. (1868).
[13] *Extrav.*, xxi, op. cit., 119.
[14] Para. 1: habito nunc cum comitibus nostris tractatu.
[15] *Studies on Anglo-Saxon Institutions* (1905), 330.

such a council for the king (*regis consiliarii*), but that Bede was not using the words *ministri* or *comites* in this sense.[1] Moreover, besides the smaller council of the Witenagemot, Stubbs assumes that in that early period there were also larger folk moots, which came together on special occasions of great and general importance, without, however, having any definite organization or being representative in the modern sense.[2]

Finally, there is also proof of an essentially similar development among the North German peoples. The proclamation of the law (*uppsaga*) was made by the law-giver in the Allthing; if there were no dissentient voice from the council or committee of law-givers (*lögrètta*), the law was passed by the silent consent of the legal assembly.[3] Here also we find a later tendency, especially in Iceland and Norway, for the body of freemen to be relegated to the background by an assembly of nobles summoned by the king.[4]

This similarity in the constitutions of the different German peoples indicates that at bottom the old national system determined their development, however much the influences of the Church and of Rome might help or hinder it. The bases of the old constitution were retained; it is merely that they have been pictured as too primitive and rigid. If we accept the view that in the time of Tacitus there were no longer any republics where all freemen had equal rights, and that these freemen were not without social differences, it is easier to understand the new conditions. An absolute monarchy did not develop evenly and appear everywhere at the same moment, bringing the republican period to a close and opening up a new age, which again made way for the rule of the nobles, who were called into being by the tyranny of that transition period. The transformation of the old popular constitution by the increasing importance of the aristocracy and by the growth of their power at the expense of that of the people had already been in process for a long time. We saw that even the early German period, as it appears in Tacitus, had a strong aristocratic stratum, and this was now strengthened by the foundation of states on Roman soil. Economic and social conditions had a profound influence on the new developments. This is clearly seen in the division of land between Germans and Romans in Italy, Spain, Gaul, and Burgundy.[5] But even where there was no definite division of the land, as perhaps in the case of the Franks, the fact that the kings and army-leaders succeeded to the rich land of the Roman *fiscus* [6] brought about a similar development. Everywhere, not only the king, but also the military authorities entered into the possession of vast estates.

A new influence was soon added which inevitably led in the same direction, i.e. the acceptance of Christianity and especially of Catholicism, which was gradually adopted by these German states. At that time not only had the Catholic Church developed its episcopal system and so received an aristocratic impress,[7] but already in Roman times it was being organized on the basis of great estates, especially so far as its main representatives and spiritual leaders were concerned. In the transition period these bishops often belonged to Roman senatorial families and therefore had the disposal of fiscal estates, but even where this was not the case

[1] Chadwick, op. cit., 333.
[2] Stubbs, op. cit., i[3], 121.
[3] Konr. Maurer, "Das Alter des Gesetzsprecheramtes in Norwegen," *Festgabe f. Arndts*, München, 1875; R. Schröder, *Zeitschr. d. Savigny-Stiftung f. RG.*, N.F., iv, 218, and K. Lehmann, *Deutsche Lit.-Ztg.*, 1883, Sp. 1437.
[4] See v. Amira, *Grundriss*, third edit., 80.
[5] See Germ. edit., i[2], 218.
[6] Ibid., p. 229.
[7] See below, chap. viii.

the same result was quickly brought about by the numerous gifts made to the Church; so that at the time when the new Germanic monarchy was formed, about the end of the fifth century, an aristocratic tendency was obvious both in the economic and in the social sphere.

Among the German peoples, aristocracy until that time had been mainly based on birth, on the renown of certain families, and on personal prowess. The permanent settlement of definite territories and the fixing of state-boundaries reacted in the same direction, for as the new authorities had permanent power over a certain defined territory, so also the rights of the new rulers of the state were strengthened and extended. Here, too, the foundations for such a development had existed from early times. The old German principle mentioned by Tacitus, that all booty and conquered lands should be apportioned *secundum dignationem*,[1] was now applied to the whole of the landed property, according as the place of movables, which, during the great migrations and military expeditions, were the chief article of booty and the measure of military success, was being taken by land, which was now passing into the permanent possession of the victors. Kings and army-leaders not only obtained extensive lands for themselves but were able to make use of these to reward those who helped them in war time, especially their followings and political adherents. The king was now able, from the estates which fell to his lot, to make gifts of land to all who entered his service, and in the same way to reward the personal loyalty of individuals. The legal peculiarity of these early German gifts of land, and their great political importance, has not been fully taken into account. At all events they played a large part in the reorganization of the old German constitution, and indeed they provide us with a key to the understanding of later political developments. If these Merovingian and Agilolfing land-grants were determined by considerations of a personal nature, such as securing loyalty to the overlord, and entitled the donor to demand services, then a new light is shed on political events within the Frankish kingdom soon after the death of Clovis. Not only the immediate entourage of the ruler, but much wider circles took part in the great civil wars, on account of their duty as vassals; they owed service to the king or to an overlord, from whom they had received land, and were thus directly involved in these troubles. It now becomes still clearer why even the church dignitaries, and in particular the bishops, were drawn into wordly affairs, not so much into the affairs of the state, which as a legal entity hardly yet laid claim to such service from the people,[2] as into the affairs of the king himself. Owing to the rich gifts of land made to the Church, chiefly from the king's property, he had a direct claim on it, and it was also possible for him to resume such Church property for his own purposes, and especially for military necessities.

We must not overlook the fact that the Church itself defined the king's relationship to it as a protective one, and acted accordingly. It placed itself under his protection and considered that it was his duty to act as its defence and shield, as we see from the ecclesiastical formulae used in the sources. What this meant in the old German constitution is shown very clearly in the Saxon translation of the Bible, which treats the disciples of Jesus as companions in battle of the Heavenly King. For the protecting overlord such a relationship involved not only duties but also corresponding rights over his *clientes*.

We must bear in mind this aspect of German law if we are to understand

[1] See above, 38 f.

[2] Germ. edit., ii[2] 85 note 441.

aright the close connection between state and Church in the Middle Ages. The constitutional position of the Church in Merovingian law was quite different from that which it occupied in Roman law.[1] The "indissoluble bond between state and church was not an imitation of late Roman conditions nor was it analagous to them".[2] The alteration in the kingship was brought about exclusively by the internal conditions and external relations of the Frankish kingdom itself. The mayors of the palace were not the first to draw upon ecclesiastical property. The practice was current much earlier, in the Merovingian kingdom of the sixth century,[3] and it was not first brought about, as Brunner believed,[4] by the wars against the Saracens. It had existed from the time that Clovis was converted to Catholicism and at once bound the bishops to the service of the king.[5] Even in the sixth century the Frankish kings appropriated church property, and gave it to their followings. Waitz was right in insisting that the king retained rights of disposal over the lands given to the Church,[6] but at the same time it must be understood that all the royal gifts were not uniform and exactly alike. There were two kinds of land grants among the Merovingians: those which created permanent and hereditary possession, and those which could eventually be resumed again by the donor.[7]

This close connection of Church and monarchy was a new source of social differentiation, since it led to the formation of aristocratic groups. It derived its importance from the capacity of conferring a distinction, which the service of the king came to exercise in an ever greater degree. This was a tradition from old German times. According as the fame and power of the lord increased, so also his following and servants grew in importance.[8] After the creation of the monarchy in the larger territories, this tendency must have been all the more noticeable, because the king's power over the old folk moot had also considerably increased. It is comprehensible that the men in the immediate entourage of the new king, on whom he bestowed offices, would be especially distinguished, as is shown by the fact that they had a higher wergeld; this is the case not only among the Frankish *antrustiones* [9] but also among the Lombard *gasindi*,[10] and the Anglo-Saxon *gesiths* and *thegns*.[11] It must be remembered, however, that this privilege was attached, not to the man, but to his office, to the service which he owed the king. Other royal servants beside the *antrustiones* possessed it, such as the *sacebaro*, the *comites*, and the *missi*. The sum was not fixed by a general rule, (for example) at three times the amount of the freeman's wergeld, but was calculated for each individual; the correct sum for each man according to his birth and race was multiplied by three, and this held good only for the time that he was in the king's service.[12]

These royal followers were also given landed estates, which were likewise to some extent a temporary gift; if the service to the king ceased, the land given

[1] Loening, *Das Kirchenrecht im Reiche der Merowinger*, ii, 16 and 30.
[2] v. Amira, *Götting Gel. Anz.*, 1896, 192.
[3] For details see Chapter viii.
[4] See below Chapter ix.
[5] Loening, op. cit., ii, 157, and Hauck, *KG.*, i², 139 f.
[6] *VG.*, ii, i³, 310 ff.
[7] See Brunner, op. cit., *Sitz.-Ber. d. Berliner Akad.*, 1885.
[8] See above, 180.
[9] Brunner, *DRG.*, i², 350.
[10] Hartmann, *Gesch. Italiens*, ii, 2, 45 ff.
[11] Stubbs, op. cit., i², 152 ff.
[12] See Guilhiermoz, op. cit., 67; R. Sohm, op. cit., 248.

for it by the king was taken away again.[1] Here is yet another proof that the old German following was the real foundation of the later development. Moreover, there was no essential difference between Frankish and Anglo-Saxon evolution. Bede's account of King Oswin (d. 651) agrees exactly with Tacitus' statement about the German *comitatus*, i.e. that their reputation and high renown in war attracted the youth of neighbouring tribes, who in their desire for military activity left home and went to other lands.[2] The Anglo-Saxon sources tell us how these royal followers (*ministri*) were furnished with lands on the specific condition of service in war. This is not a peculiarity of Anglo-Saxon development, nor is there any reason to suppose that it influenced Frankish custom. The edict of King Chilperic (561–584), which is remarkable as being the result of negotiations between the king and the *obtimates vel antrustiones*, recognizes grants of land from the king to the *leudes* as a custom existing in his father's time.[3] Moreover, Waitz has pointed out other sources which show a similar custom among the Visigoths as well as the Anglo-Saxons. They make it clear that these *leudes* were given *beneficia* by the king especially in order to discharge military service, and that on these occasions it was possible for them to win land for themselves.[4]

It is clear that these men, with their social and legal privileges (wergeld and judicial status) were able, owing to the official part which they played in the royal service, to add other estates to those already granted them by the king. It may be that they did so, as the Visigothic law indicates, in war (as booty ?), or that the Church, dependent on the protection of the king and his officials, used them as *advocati* or *agentes*.[5] It may be that they seized unjustly and by force *beneficia* which had become free, or other estates. Also it is to be observed that the fourth Council of Orleans in 541 was strongly opposed to the practice of claiming and appropriating church property *sub potentum nomine adque patrocinio*.[6] The Council of Maçon in 585 spoke still more vigorously against it; here it is a common complaint that the royal servants and following, as well as the secular authorities, seize other men's lands and drive out their owners.[7] Clearly, the usurpation of ecclesiastical and other property was then widespread, and it was possible, especially for the royal servants, to do this without scruple, on account of their office and their privileged and therefore protected position. The same complaints occur among the Visigoths [8]; the royal officials were abusing their power by enriching themselves at other people's expense.[9]

This process of development in the German constitution, as important as it is difficult to follow, was soon furthered in the new kingdoms by divisions and internal conflicts, which began as early as the death of Clovis in 511. The division of the Frankish kingdom among his four sons not only diminished and broke the royal power, but also brought about friction between the new and rival states, so that various hostile parties were bound to arise. The rebellions in these succession states, which broke out not long after Clovis' death,[10] involved the

[1] Cf. the references in the sources given by P. Roth, *Gesch. d. Benefizialwes.*, 216, and his *Feudalität u. Untertanenverband*, 57 ff.
[2] Cf. above, 179 and 181.
[3] C. 4; MG., Capit. i, 8; and Waitz, *VG.*, ii, 1[3], 349, note 4.
[4] See *Lex Visigot.*, iv, 5, 5: MG. LL., sect. i, 1, 202; and Zeumer, *NA.*, xxvi, 146 f.
[5] Cf. especially the Edict of Clothar II; c. 14, MG., Capit. i, 22.
[6] C. 25, MG., *Concil.*, i, 93.
[7] C. xiv; ibid., 170.
[8] See the references from the sources given by F. Dahn, *Könige*, vi[2], 355 ff.
[9] Ibid., 151 ff.
[10] See W. Schultze, op. cit., 116 ff.

neighbouring petty kings, owing to the minority of his sons, who were now called to the throne. After Theudebert's death (d. 548), the royal family itself quarrelled, for Chramn, the son of King Clothar, repeatedly rose against his father. This rebellion provided a new excuse for the other succession kingdoms to interfere as well as neighbouring tribes who were less closely dependent on then. Chramn was supported not only by his uncle, Childebert, but also by the Saxons, who were subject to the Franks.[1] Thus there began a movement which could no longer be stopped by the power of great individual kings, and as the monarchy declined the kingdom fell to pieces. The more vigorous the separatist movements were, and the more powerful the *optimates* became in the succession states, the less they welcomed any attempt to restore the unity of the kingdom. If it was restored for a time, this fact merely made the new aristocracy more determined to frustrate all efforts of the kind in future.

The events which took place after the death of Clothar (561) provide an especially characteristic example of this. He had once more united the whole kingdom of the Franks; now it was divided among his four sons. The internal warfare broke out all over again; not only did Brittany break away and assert its independence (a sign of the declining power of the monarchy), but the civil wars after the death of King Charibert (567) still further increased the power of the nobles. It is impossible properly to understand the history of the Frankish kingdom during the period of the two she-devils, Brunhild and Fredegund, if we see in it merely a horrible family quarrel, the terrible degeneration of the Merovingian royal family, or even the personal vendetta of two royal women.[2] As a result of this internal strife there came about a fundamental change in the constitution; the religious and secular aristocracy, which had been in the ascendancy for some time, now gained the upper hand of the old monarchy. In 575 Fredegund ordered the assassination of King Sigibert, after his victorious entry into Paris, when Chilperic's nobles had deserted their master and turned to him. Sigibert's son, Childebert II, was only five years old, and the nobles of Austrasia took advantage of this favourable opportunity to seize all power for themselves.

Their great chance came when Chilperic was assassinated in 584, for his heir in Neustria, Clothar II, was a child of four months, while the Austrasian ruler was only fourteen, and in Burgundy a weak and undecided old man, Guntram, was on the throne. It is not surprising that the nobles now rose decisively against the central power; and even though the rebellion of Gundovald, the illegitimate son of Clothar I ("the first open revolt of the nobility against the monarchy"),[3] failed owing to the coalition of the Austrasian and Burgundian monarchies, yet this aristocracy rose again in 587 on behalf of Fredegund, and prevented her from being punished for her murderous deeds. Brunhild, her great political rival, tried to raise the fallen monarchy again, and was able to rely on the support of her people, who were in rebellion against the nobles (Treaty of Andelot, 587). But the restoration of the unity of the monarchy, which was achieved by Childebert II after Guntram's death (592), did not avail to save the kingdom from its certain fate. He died in 595 and left only two young sons of eight and nine years, and this gave the nobles the chance to desert Brunhild, whose power had increased enormously. Two separate kingdoms were established and in three years civil war broke out again. A military revolt against Brunhild's mayor of the palace destroyed her power, and the quarrel which sprang up between the brothers, Theuderic and

[1] W. Schultze, ibid., 124. [2] W. Schultze, op. cit., ii, 127. [3] Ibid., ii, 155.

Theudebert, ended finally after the terrible murder of Brunhild, in a complete victory of the nobility over the monarchy; for even though Clothar II had sole power in the kingdom, the might of the aristocracy was decisively confirmed, as is plain from the famous edict of that king in 614. This was the *Magna Carta libertatum* of the all-powerful religious and secular aristocracy, the formal concession of rights which they had won *de facto* in these long wars.[1]

This edict of Clothar II[2] was the result of discussions at a national council, which sat in Paris at the same time as a council of bishops.[3] The king was acting in this *cum ponteficibus vel tam magnis viris optematibus aut fidelibus nostris*. The edict and the treaty of Andelot (587)[4] show traces of the confusion of the preceding period, but they are also the finished product of the process which had meanwhile taken place. Religious and secular nobles, bishops and *potentes*, appear as great landowners whose property lies in many districts.[5] They are already in possession of immunities and have, above all, the so-called right of representation before public justice.[6] These important rights must have given their possessors a privileged position, which, in consequence of the refusal of entry to all royal officials, was secure against attacks from the royal power.[7] For the immunity of the *potentes* existed not only where the land came from the king, but also where it never had belonged to the *fiscus*[8]; it was a personal favour granted to individual nobles, religious and secular, and included all their lands.[9] The king granted it in return for services rendered, with the purpose of increasing their indebtedness to him and keeping them loyal. The king's policy of creating a firm support for himself in a time of confusion is seen here as clearly as in the grants of land. The nobles, for their part, endeavoured to free themselves from the power of the royal officials and to place themselves immediately under the king. The civil wars gave them the opportunity to achieve their desire.

Certain clauses in the treaty of Andelot (587) show us the course of this process in detail. Anything which the Frankish kings gave after the death of Clothar to the Church or her subjects, was to be held in perpetuity. But if *per interregna* any property had been taken from anyone without justification, it was to be restored to him by a legal decision. The same was decreed with regard to those lands which had once been held *per munificentiam* of the preceding kings up to the death of Clothar. Neither of the contracting kings was to injure the *leudes* of the other, or receive them if they wished to go over to him. The sanction at the end of the treaty is particularly noteworthy. The best security that can be given against any infringement of these stipulations is the threat of the loss of all *beneficia*.

These are an echo of the great party struggles after the death of Clothar I. They brought about immense changes among the *leudes* in the different small kingdoms,[10] among which we must reckon the general restitution of land ordained in their favour by the edict of Clothar II, which stated that everything which they had meanwhile lost by loyalty to their lords should be restored to them in full.[11] It is here that we may see the real nature of these important decrees; they repre-

[1] See recently H. Fehr, *DRG.* (1921), 32.
[2] MG., Capit. i, 20 ff.
[3] MG., *Concil.* i, 185 ff.
[4] MG., Capit. i, 20 ff.
[5] Clothar's Edict, c. 19. See also the *Pactus prō tenore pacis* (511–588), c. 12. MG., Capit. i, 6.
[6] Edict of Clothar II, c. 14 and 15, op. cit., 22.
[7] Germ. edit., ii[2], 93.
[8] Kroell, *L'immunité Franque*, 56 and 64.
[9] Ibid., 53 and 94 f.
[10] Concerning the transference of the *leudes*, cf. the decree MG., Capit., i, 14.
[11] C. 17, op. cit., 23.

sent the completion of a process which had begun long before, rather than the beginning of a new development. Consequently I do not agree [1] that the edict is a " turning-point ", at which, after " great tension ", the royal power at last begins to weaken, for the anti-monarchical forces were not for the first time pressing forward victoriously after Brunhild's death. Rather it is the harvest of seed sown long before, and now ripened. The many sheaves brought home show that there is no question here of a beginning.[2] It was not merely that the king was being forced, " by pressure from the nobility of office which had grown great in the royal service, to make a number of concessions and to promise the abolition of abuses." For these rights were promised not only to the nobility of office, but still more to the *episcopi et potentes*. Moreover, Clothar II issued a mandate to the royal officials (*agentes*), the so-called *Praeceptio Clotharii II*,[3] which impresses on them, to some extent at least, the importance of observing the rights granted thereby. Not a few of those rights are directed against the royal officials and are intended as a protection against them. For instance the right of immunity and many of the other stipulations involve a considerable decrease in their official authority.[4] In discussing these, Waitz remarked that most of them were directed against the king.[5] This explains the *Praeceptio* of Clothar II; a special royal decree was necessary in order to ensure obedience to the edict.[6]

This leads us to one of the main problems of early constitutional and social history, to which it is more essential than ever to find an answer, as a consideration of Clothar II's edict shows. The problem is crucial for an understanding of the internal development of the Frankish kingdom for it links on to the questions raised by other social changes of the time and is therefore intimately related to the essential transformation of society. We shall now consider it in a separate chapter.

[1] See Germ. edit., ii², 94 f.

[2] It is repeatedly emphasized in the Edict that it is a question of maintaining rights which were already in existence. See the *leit motif* indicated in the opening phrases, op. cit., 20, and c. 9 on taxation.

[3] MG., Capit. i, 18 ff.

[4] See c. 4, 5, 6, 7, 8, 9, 12, 22, 23.

[5] *VG.*, ii², 690, or II, ii³, 395.

[6] Cf. Germ. edit., ii², 96.

Chapter VII

THE REORGANIZATION OF SOCIETY

THE accepted theory that the nobility originated in the age of the barbarian kingdoms, in the first place among the Franks, is the result more of speculation than of a careful analysis of the sources. How have scholars arrived at this view? In the first place it arose naturally out of the fundamental hypotheses which prevailed concerning the previous Germanic period. If, during that time, there was a republican constitution, in which all power rested with the people and all freemen had equal rights, so that there was no especially privileged nobility,[1] then it seemed obvious that there could have beeen no such nobility in the earlier Frankish period. This negative argument was supplemented by a positive one drawn from the *Lex Salica*, which was for long regarded as the main source of information for early Frankish conditions, and which does not mention a nobility. Consequently, it is argued, no such nobility existed. But is this conclusion really justifiable? Important jurists [2] had already shown that in the case of the *Lex Salica* an argument *ex silentio* of this sort proves nothing. Many important judicial questions, such, for example, as the right of inheritance, are not mentioned in it, even though they must already have been in existence; the object of the law was not to give a complete account of the Salic order of inheritance.

It has often been alleged, moreover, that in earlier times a nobility of birth of this sort existed among the Franks also, but was afterwards destroyed or deprived of its privileges by the monarchy.[3] This explanation is, in fact, contradicted by all our other information on the matter. It is unlikely that a nobility of birth should have been non-existent among the Franks, when its existence can be proved among all the other tribes. Moreover, there is nothing in the history of the early Frankish monarchy to support the hypothesis of a destruction or even of a suppression of the nobility. It cannot reasonably be assumed that the first kings, who on the whole were conservative in their domestic policy, (especially Clovis), got rid of their old folk nobility just at the moment when they found themselves in their new state with its extensive provincial territory, face to face with a Roman nobility, the power of which rested on great landed properties. This old nobility consisted, indeed, of the lords of "followings" who were the doughtiest in war and the most renowned among the people.[4]

The main point, however, is that we have a sufficient number of certain proofs of the existence of such a nobility.[5] These show that importance was attached not only to free birth or descent, but also to the possession of important and illustrious parents or ancestors, and men extolled the antiquity and splendour of a house, which was handed down to its children and secured for them a more

[1] See above, 178 ff.

[2] See v. Amira, *Erbenfolge und Verwandtschaftsgliederung*, 1874, 2 f.; and O. Gierke, "Erbrecht u. Vicinenerbrecht im Edikt Chilperiches" in *Zeitschr. f. RG.*, xii, 439 ff.

[3] See Germ. edit., ii², 98.

[4] See Germ. edit., ii², 98 f.

[5] See the collection of sources in Dahn, *Könige*, vii, 1, 143.

honourable position during their youth, or at their first entrance into the service of the state.[1] Is not this the same picture which Tacitus draws of the *adulescentuli* who derive a princely position from *insignis nobilitas aut magna patrum merita*?[2] Men who are not yet in the king's service, as, for example, Saint Furseus, later abbot of Lagny, are similarly described.[3] Waitz refused to consider these members of old and important families of Frankish origin as a true nobility, but he had to acknowledge that within the new Frankish aristocracy, which had arisen owing to increasing wealth and the influence of royal offices, there must have been "men who had been members of the old German nobility."[4] As for the *homo Francus* of the *Lex Chamavorum*, distinguished by his rich landed property and his threefold wergeld, his presence can only be explained in the light of such an old Germanic class.

Finally, let us take the main explanation given as to the origin of the Frankish nobility, namely that it was merely a nobility of service. Waitz, though a supporter of this theory, made the following acute observation: "it must not be forgotten that service, even though royal service, is in contradistinction to the idea of nobility, and the duty which it imposes must be subordinate to the privilege which it gives before it can be regarded as the basis of a privileged class."[5] He points out that a real nobility must be hereditary not merely in theory, but in law; "and it never reached that stage either then or at any time in the whole Frankish period." If we follow this reasoning to its logical conclusion, the very basis of the old theory of a nobility of service is undermined. For a Frankish nobility is proved to have been in existence considerably earlier, at latest by the Edict of Clothar in 614. The great majority of royal officials (*agentes*) were certainly not reckoned among the nobility at that time but were actually opposed to it, as may be proved from a comparison of the *Praeceptio* of Clothar II with his edict.[6] In particular, the office of Count (*Graf*) itself was still not hereditary in the Merovingian period or even in early Carolingian times.[7] It should also be observed that, besides the sources quoted by Waitz to prove the existence of a superior class above the freemen, we also have the *Praeceptum Childeberti regis* (511–558), where at the end, in the sanction formula, a distinction is made between the *serviles personae*, the *ingenuus*, and, finally, an *honoratior persona*. According to this, the punishment for an infringement of the royal decree seems to be differently graded.[8]

An ancient nobility was undoubtedly also to be found among the Franks. In so far as the theory of royal service is tenable, it supports the assumption that here, too, we have a continuous development from early German conditions. The royal service certainly did not appear for the first time in the Frankish period, but was already in existence in the time of Tacitus and could confer distinction then. If in those early times noble youths were already entering eagerly into the service of ruling princes,[9] it is obvious that when a much mightier and more renowned monarchy had developed among the Franks, these old German conditions persisted and there were even greater opportunities for maintaining the nobility. There was no need to create a new nobility, since this ostensibly new motive

[1] Waitz, 376, note 2.
[2] *Germania*, c. 13; see above, 180.
[3] See the *Vita Fursei*, c. 1; *MG. SS. rer. Merov.*, iv, 434.
[4] Op. cit., 379.
[5] *VG.*, ii, 1[3], 379.
[6] See above, 201.
[7] See H. Brunner himself, op. cit., 1[2], 350.
[8] MG., c. 1, 3, No. 2.
[9] See above, 180 ff.

for doing so, namely the service of over-lords and ruling princes, was as old as the early nobility itself.

Without doubt, however, this was not the only reason for creating a nobility. As well as illustrious descent, extensive landed property must even from the earliest times have supplied the demand for it. The usual theory that great estates arose at a later period, or indeed not until the Carolingian age, is quite untenable. It is purely artificial and based on the supposed fact that in Tacitus' time freemen had equal amounts of land.[1] But we have already seen that at that time there existed even greater distinctions in landed property and that seigneurial estates [2] had arisen as is proved by the Salic and Ripuarian laws, where there is mention of ownership of great herds of cattle,[3] pre-supposing a considerable landed property.[4] This is further supported by the fact that an addition the *Lex Salica* distinguishes between *minofledi* and *meliores*. The former has usually been explained as meaning freemen, independent farmers,[5] from which it follows directly that the *meliores* must have been greater landowners. The *minofledi* had a smaller wergeld, an important reason for concluding that there were differences of rank. At any rate, there is obviously a difference in property.[6] These large estates, mentioned in the earliest Frankish sources, were certainly neither first created at that time, nor merely the result of royal gifts. The early German principle, according to which, as Tacitus tells us, newly-settled land was allotted *secundum dignationem*,[7] must from the beginning have given larger estates to the most important men.

The theory here put forward derives particular support from conditions which are known to have existed among the other German tribes. The Saxons, Frisians, and Anglowarni at any rate, had a nobility which was derived from the German national nobility,[8] and among the Alemanni, too, we find several classes differing from one another in the amounts of their wergeld. The Alemannic Law mentions, besides the *minofledi* (also called *liberi*), another class, the *mediani*; and the Pactus, a century earlier, in the first half of the seventh century, mentions two upper classes, the *primi* or *meliorissimi* and the *mediani*. In the Burgundian law there are also three classes: the *optimates*, the *personae mediocres* and the *minores*.[9] Since the *minofledi* occur in a parallel position here and among the Salian Franks, the Alemannic *mediani* must be interpreted as larger landowners who in their position of lower nobility were superior to the *minofledi*. Brunner assumes that there must have been among them at least a few representatives of an older hereditary nobility, which lost its political influence after the subjugation of the Alemanni to Frankish rule, and therefore sank below the *primi*.[10] Waitz's explanation was that the former appear as members of a higher class, which cannot be other than the old nobility,[11] and R. Schröder was also convinced that about the time of Clothar II an hereditary nobility appeared among the Alemanni.[12] An hereditary nobility is thus commonly assumed to have existed among the Alemanni at least up to the seventh century.

[1] See above, 7 f.
[2] See above, 44 f.
[3] *Sal.*, Tit. xxxviii, 3; ibid., para. 4. Tit. ii; Tit. iii, 8; Tit. iv, 5.
[4] See Waitz, *VG.*, ii, 1[3], 280.
[5] R. Schröder, *DRG.*[5], 227 (or 6th edit., 233), and H. Brunner, *DRG.*, 1[2], 344.
[6] See Dahn, *Könige*, vii, 1, 181.
[7] See 38 f.
[8] Brunner, *DRG.*, 1[2], 348; see also R. Schröder, *DRG.*[5], 225 f., 6th edit., 232.
[9] Brunner, op. cit., 343.
[10] Op. cit., 345.
[11] *VG.*, ii, 1[3], 371.
[12] *DRG.*[5], 226 (or 6th edit., 233).

According to Waitz, the old nobility largely lost its position among the Burgundians as it did among the Franks, and other contrasts were developed in respect of wealth and different kinds of prestige.[1] But he concludes from the higher wergeld attached to the highest rank that the latter consisted of retainers of the old nobility, and that both this wergeld and the Burgundian law still held good, even under Frankish kings. *Optimates* are to be understood as signifying representatives of the older nobility of birth, for where there is a more detailed enumeration of the various classes, they are expressly separated from the functional or service nobility and have the priority.[2]

Let us look further into the matter. The old folk-nobility is again to be found among the Visigoths.[3] Occasionally the discrimination is made at an even later date so that we find *nobilis sive mediocrior viliorque persona*, which emphasizes the *nobilitas sui generis*,[4] whereas at other times we find only that the *personae onestioris* or *superioris loci* [5] are contrasted with the *persona inferioris* or *humilioris loci*.[6] The *humiliores personae* are equal with the freemen.[7] They are also contrasted as *pauperes* with the *nobiles* or *potentes*,[8] who were the rich landlords.[9] Among the Lombards in Italy there was an hereditary nobility to which belonged the numerous old families of ducal rank, who had for a long time been the adversaries of the royal power.[10] An old Italian nobility is often mentioned in the letters of Pope Gregory I (590–604). These illustrious families kept their rank and their property without always attaining to public office. They were usually content to be given an imposing title.[11] Side by side with them the royal service nobility of the *gasindi* became more prominent. The same is true of Anglo-Saxons in England. There the old nobility of birth (*Eorlas*, *Aethal*), distinguished by a high wergeld, still existed in considerable numbers; and the royal nobility of service (*thegns*) became more and more important, without, however, entirely displacing the former.[12]

Finally, let us take the Baiuvari. We have little information about them, since our sources go back only to the middle of the eighth century. At that time they had still an old nobility of birth, the six families especially mentioned in the *Lex Baiuvar*. Waitz supposed that these were old lordly families belonging to the various peoples who were amalgamated in the Baiuvari tribe, and that the ducal family of the Agilolfings was merely the chief among them.[13] Perhaps there were more of these families before the eighth century. They were only the first (*primi*) after the Agilolfings, and the Frankish monarchy recognized their right to a double wergeld. The wording of the law[14] does not exclude the possibility that earlier, or even at the time, there may have been others who belonged to this

[1] *VG.*, ii, 1[2], 370.
[2] *Prima Constitutio*, c. 5; see Germ. edit., ii[2], 105.
[3] Cf. Dahn, *Könige*, vi[2], 88, 111 f.
[4] *Lex Visigot.*, ix, 2, 8; MG. LL., sect. i, t. 1, 372.
[5] Ibid., ix, 3, 3, op. cit., 380; cf. also 27 (Euric.); ii, 4, 4, op. cit., 97.
[6] Ibid., viii, 3, 12, op. cit., 326, and Euric., 27; vii, 5, 2, op. cit., 304.
[7] Ibid., ii, 3, 4, op. cit., 90.
[8] Ibid., ii, 3, 9, op. cit., 93.
[9] Dahn, op. cit., vi[2], 122 ff.
[10] L. M. Hartmann, *Gesch. Italiens*, II, ii, 46.
[11] Ibid., II, i, 135, also 157, note 9.
[12] Stubbs, op. cit., 1[2], 151 ff.; and Chadwick, *Studies on Anglo-Saxon Institutions* (1905), and Vinogradoff, in *The Cambridge Medieval History*, II, 643.
[13] *VG.*, ii, 13, 371.
[14] MG. LL., iii, 289.

nobility of birth. Since in some passages of the Law only *nobiles* [1] are spoken of, the allusion to these families as *quasi primi* might almost be held to indicate the existence of other nobles.[2]

In early Carolingian sources, especially in the ecclesiastical land-books (records of land grants), which are only a few decades later than the *Lex Baiuvar.*, *nobiles* are often mentioned. Various attempts have been made to explain this.[3] I have already shown elsewhere that while the use of the term *nobilis* in the land grants and in other sources, such as the Dingolfing decrees, does not justify the assumption that all those who are described as *nobiles* were nobility in the legal sense, it is impossible on that account simply to deny the existence of a nobility.[4] An explanation has been sought in the theory of a nobility of service.[5] On the whole, however, I am inclined to believe that even at the time of the *Lex* a nobility existed apart from the six most illustrious families. This is indicated also by the term *proceres* used in the sources.[6] It has been correctly argued with regard to the *nobilis campio* of the *Lex* that it is very unlikely that the members of those six exalted families would have deigned to be employed as paid fighters,[7] and the theory of a service nobility is contradicted by a passage in the *Lex Baiuvar.* itself, where the *vassi regis vel ducis* are mentioned among the persons owing service at the Count's court of justice [8]; for they are reckoned here among the *liberi* and not as *nobiles*. Moreover, the *Lex* also mentions a *homo potens*, over whom the count had no coercive power in a campaign, but whom the duke alone could command.[9] He must, therefore, have been a person of exalted rank, superior to the ordinary freemen.

All these developments among the various tribes will explain the situation among the Franks. Everywhere we still find traces of the old family- or folk-nobility. It is no longer correct to make a sharp contrast between service and birth, because, as we have seen, the service of the ruling prince bestowed a higher rank from the earliest times; and the long periods of war and migration gave men a real opportunity to distinguish themselves and to receive rich rewards from kings and army-leaders for their military services. The fusion of folk-nobility and service nobility, which were presumably at one time separate, did not begin during this late period of monarchy, but came about naturally in earlier times. The theory that the nobility of birth was forced either to enter the nobility of service or to be inferior to it,[10] is an artificial one, not based on a true picture of existing conditions as they appear in the sources. According to the well-known social development of the earlier aristocracy (described in detail above),[11] the Frankish king from as late as 614 [12] was obliged to take his counts only from among the nobles living in the district concerned.

It is quite clear that the theory under discussion was unconsciously influenced

[1] *Lex Baiuvar.*, xviii, 1, i and xxi, 6.

[2] When Waitz says that the reference here is chiefly to members of these families, this "chiefly" shows that he himself thinks it possible that other nobles might be included among these *nobiles*. *VG.*, ii, 1[2], 372.

[3] See Germ. edit., ii[2], 107 f.

[4] *Die Wirtschaftsentwicklung der Karolingerzeit*, ii, 70 = ii[2], 73.

[5] See on this Germ. edit., ii[2], 108.

[6] Cf. Dahn, *Könige*, 113 f., and Hasenöhrl, "Beiträge z. Gesch. d. deutsch. Privat-Rechts in d. österr. Alpenländern." *Arch. f. österr. Gesch.*, xcvii, 27 ff. (1909).

[7] Hasenöhrl, op. cit., 28.

[8] ii, 14. [9] ii, 5.

[10] R. Schröder, *DRG.*[5], 226. [11] See 195 ff. especially 198 ff.

[12] Cf. the Edict of Clothar II, c. 12, op. cit., 22.

by the conditions prevailing in Carolingian and post-Carolingian times. Once again it must be pointed out that the three-fold wergeld of men, or, rather, of certain men, in the king's service was not generally applicable regardless of birth, but was applied according to their different rank.[1] Therefore it is not the case that when members of the old nobility of birth entered the king's service they were no longer distinguished from freemen, or even from unfree men, in that service. In sources of the sixth and seventh centuries, and even later, it is expressly stated when the holder of royal offices was of noble birth, and vice versa.[2] Moreover, for a long time, lasting into the early Carolingian period, the royal offices were not hereditary, so that when a man was no longer in the king's service, he reverted to the rank which he had previously held. On this account, an economic condition necessary for the acceptance of such royal offices and services was that the king should provide the man with adequate property. These gifts of land and *beneficia* were also at first not hereditary, but lasted only for the duration of service, like the three-fold wergeld. If the service came to an end or could not be performed on account of some hindrance, bodily infirmity, or other circumstances, the grantee might expect to lose the property thus acquired.[3] There was no compulsion to enter the king's service. The old nobility and the owners of great estates for that very reason were not inferior to the official class—which really did not exist as such, since offices were not hereditary—for they had privileges which protected them against the authority of the officials. Above all they had the *immunitas*.

The important question of early constitutional development may also be relevant in dealing with the relationship between the old hereditary and land-owning nobility on the one hand, and the " new nobility of service " on the other. We know to-day that the beginnings of the *immunitas* arose out of late Roman conditions and that the great estates of the times were entitled to be free from all public judicial duties and from public office.[4] This development continued in the early Frankish period, as did the great estates themselves. The Frankish kings, especially Clovis, could not possibly think of depriving the *potentes*, the great Roman estate-owners in their kingdom, of their ancient position. Then when, with the establishment of the king's power, the power of the royal officials (especially that of the counts) also increased, these *potentes* endeavoured to get their actual freedom from the authority of the counts legally recognized by the king.[5] The exclusion of public officials from their estates was their chief aim; and they succeeded in attaining it at the beginning of the seventh century, when, after a period of internal confusion, the immunity not only of Church property but also of the property of the *potentes* was achieved, in the general increase of the power of the nobility embodied in the Edict of Clothar II (614). Thus the nobles with great estates had maintained their independence in face of the increasing power of the king's officials.

At the same time a second tendency is observable in the lay aristocracy. The office of count was not to remain an appointment which the king was free to make; but further security was provided against the encroachments of royal

[1] See above 197 and also F. Dahn, *Könige*, vii, i, 165.
[2] Cf. Dahn, op. cit., 149.
[3] So it was still in Carolingian times: see my *Wirtschaftsentwicklung d. Karol. Zeit.*, I, 171 note 7 = 1^2, 191, note 7.
[4] See in general Beaudouin, " Les grandes domaines dans l'empire Romain," *N. Rev. Hist. du droit français et étranger*, 1897 and 1898, and above, 136 ff.
[5] Cf. Kroell, *l'Immunité Franque*, 44 ff., esp. 51.

officials by the provision that counts (*iudices*) were in future not to be appointed from other provinces or districts, in order that, if they misused their office, the damage might be made good from their private property.[1] It is clear that the interests of the landowning hereditary nobility are here opposed to those of the nobility of service, and that the latter was repressed by the political power of the former. The same process may be seen in the administration of finance. The might of the *potentes* had clearly led to a considerable diminution of the king's income from his domains. The Edict of Clothar II (614) forbade the officials of the *potentes* to deprive anyone of his property.[2] And again in the eighth century, at any rate in Southern Gaul, where the after-effects of Roman conditions were especially noticeable, the same development may be observed. In order to remedy these and other abuses, Lewis of Aquitania, son of Charles the Great, promulgated (*c.* 794) a reformatory decree for the royal estates (the *Capitulare de Villis*), which expressly states that in future public functionaries are to be taken not *de potentioribus hominibus*, but *de mediocribus, qui fideles sint.*[3] Thus the royal officials had to guard the king's interests against the *potentes*.

Finally, let us consider the royal *beneficia* (*Lehen*), the owners of which have also been included among the royal nobility of service.[4] This inclusion is not quite correct, for even though office-holders might be provided with royal fiefs, they were not granted only to officials. In the early Carolingian period one of the chief duties of royal officials was to prevent royal *beneficia* from becoming private property (*alod*), and also to see that the holders did not wrongfully use their *beneficia* for the economic improvement of their own private estates.[5] Similar instructions were given by the king to the *missi dominici*.[6] This shows clearly that danger was threatening from the royal officials themselves. Among the holders of *beneficia* who were guilty of these abuses, the counts [7] are expressly mentioned. This explains why it is the *missi*, controllers of public administration, who are charged with the removal of these abuses, rather than the usual representatives of the king's authority, the counts themselves. The private economic interests of the latter outweighed the claims of their official duty in the king's service, and, on account of the material advantages thus obtainable, the interests of the counts came to coincide with those of the *potentes*. But this had already happened in the sixth and seventh centuries. King Dagobert complains that the *duces* and *domestici* were seizing royal estates,[8] and King Chilperic, in a well-known Edict (561–584), opposes the encroachment of the counts, who were illegally appropriating other men's property.[9] The old quarrel between the *potentes* and the royal officials here seems to be settled to the disadvantage of the monarchy itself. This appears to be an amalgamation of fusion of the service nobility with the hereditary landowning aristocracy, rather than the contrary. But this whole development was possible only because from earlier times there had existed, side by side with the nobility of service, another nobility which was already to some extent opposed to the

[1] *Edictum Clotharii*, c. 12. MG., Capit. i, 22.
[2] Ibid., c. 20; op. cit., 23.
[3] MG. Capit. i, 88, c. 60. See also my *Wirtschaftsentwicklung der Karolingerzeit*, 1, 48, note 1 = 2nd edit., 1, 53, note 2.
[4] Cf. F. Dahn, *Könige*, vii, 1, 166.
[5] See my *Wirtschaftsentwicklung der Karolingerzeit*, 1, 111 f. = 2nd edit., 128 f.
[6] MG., Capit. i, 93, c. 6 (802), and i, 131, c. 6, 7 (806).
[7] Ibid., c. 6.
[8] Cf. *Vita Elegii*, i, 17*a*. *MG. SS. rer. Merov.*, iv, 683.
[9] MG., Capit. 1, 9.

monarchy, and had won a legally recognized political ascendancy at its expense. For that reason no one was to be appointed to a position of authority in the royal estates who was himself already one of the *potentes* (794).

This ascendancy of the nobility, and especially the fusion of their interests with the economic interests of the royal officials, soon gave rise to a further development. They succeeded by degrees in freeing their estates from administrative control and in reaching a position in which they stood apart from the authority of the state. This process was effectively begun by the *immunitas*, held by the great estates since the end of Roman rule; it is not true that it was first caused by the weakness of the central power, or by the decay of the monarchy. Even very powerful kings like Clovis, Chilperic, and Dagobert I recognized the immunities of the *potentes* and could not check this development. The decline of royal power furthered and facilitated it, but did not give rise to it. From the beginning the right of patronage (*patrocinium*)[1] helped in the same direction, because it enabled the nobility to make an increasing number of people dependent on them. Economic power was transformed into an increased social power. These mighty landowners as representatives of public authority pushed themselves between the monarchy and the great mass of the free population, and so formed an intermediate court of appeal, which became important in judicial as well as in financial and military administration.[2] Feudalism completed the process; but the so-called feudalization of public authority is as old as this nobility itself and was already beginning at the end of the Roman period.[3] One of its most effective stimulants was the subjection of the service-nobility to the influence of the large estate, for this caused them to forget their original duties, which were to attack the abuses of the *potentes* and to keep watch on the king's behalf. The royal officials increasingly used their power to enrich themselves and to strengthen their own economic and social position.

It was only a further step in the same direction when the royal offices gradually became hereditary. The greater the *de facto* power and the economic and social resources of these officials, the less could the monarchy attempt to bestow the office, on the death of its holder, on anyone outside his family. Foreign or economically powerless servants of the king could not have held their own against these rich landlords. By its acknowledgment of the principle that only rich inhabitants of the Gau could be made counts, the Edict of Clothar II (614) made it possible for that office to become hereditary; and even though this was not yet by any means a recognized right, it often happened in practice, especially where the holders were loyal to the monarchy in its struggles and its wars.[4] Examples have already been given in which in the sixth century countships were handed down from father to son, or certain families had permanent possession of this honour.[5] We have also seen that in King Dagobert's time (636–7) many counts had no duke over them and were therefore as free and independent as a duke,[6] and it has been proved that the office of duke was the hereditary property of important families in the seventh century.[7] An impetus was given to this development in the seventh

[1] For details see below, Chapter IX.
[2] For its origin see below, Chapter IX.
[3] See Germ. edit., i², 335, and the works cited there.
[4] See above, 198 f.
[5] Waitz, *VG.*, ii, 2³, 38 f.
[6] Cf. Fredegarius, c. 78; *MG. SS. rer Merov.*, ii, 160.
[7] Waitz, *VG.*, ii, 2³, 413 ff.

century by the political conditions among the Franks which have been described above.[1] The bishops looked on their office as their private property and appointed their own successors.[2] The anarchy in the country after the death of Dagobert I fostered a rapid growth of these tendencies[3]; the powerful nobility then appropriated even the influential post of mayor of the palace, which became so dependent on the nobility at the end of the seventh century that it was filled from each noble family in turn.[4]

A similar development took place in Spain. There even more than in Gaul, owing to the stronger influence of late Roman conditions, the ecclesiastical and secular nobles gained *immunitas*, and brought the free population into dependence by the help of patronage.[5] The monarchy did not succeed in becoming hereditary, but remained elective. The endeavour to make it hereditary with the help of the Roman ecclesiastical aristocracy[6] failed, owing to the resistance of the secular nobility. Frequent civil revolutions and repeated depositions of the kings, who were replaced by others drawn from among the nobles, considerably increased the power of the latter, especially that of the bishops. Even if, from time to time, an individual king managed to attain greater power, this gave the nobility an excuse to overthrow him as a tyrant for "misuse" of his strength. Thus the son of Reccared, Leova II, who had subdued the lay aristocracy, was assassinated in 603 by his refractory nobles.[7] Swinthila also fell in 631, when the nobility made a bloodless end of his rule by raising Sisenand to the kingship. And even though the grey-haired Kindasvint, who had himself taken part in earlier rebellions of the aristocracy, seized the throne (641) and tried to strengthen the royal authority, his son Receswinth, whom he took as co-regent in 649 before his death, could retain the kingship only by sacrificing the authority won by his father and by making great concessions to the nobility. After his death, neither of his brothers was chosen as king, but Wamba, one of the greatest of the nobles. He, too, had to contend with a rebellious aristocracy soon after his election, and when he had succeeded in overcoming them and in strengthening his position by the conquest of external foes, the Moors, and by army reforms, he was disposed by Erwig, who owed his rise to the nobles and was entirely dependent on them. Under his successor, Egica (687–701), numerous conspiracies of the nobility broke out afresh.

Thus in the course of the seventh century not only was the power of the monarchy weakened and undermined, but the nobles, as we see clearly from the councils, which had grown into national assemblies, had managed to increase their privileges at the expense of the royal power, so that even as early as Wamba's reign the common freemen had been for the most part subjugated by them, and reduced to the position of their subjects.[8] And at that point it became impossible to check the growth of feudalization.

The beginnings of the process may also be seen in Italy early in the seventh century. The old hereditary nobles had increased their prestige, which depended

[1] See above, 199 ff.
[2] A. Hauck, *Kirchengesch.*, 1^2, 364 = 1^4, 403.
[3] Cf. W. Sickel, "Die Privatherrschaften im fränk. Reiche," *Westd. Zeitschr.*, xv, 111 ff., especially 141, and Ch. Pfister in *The Cambridge Medieval History*, II, 151.
[4] Cf. Waitz, *VG.*, ii, 2^3, 402 f., esp. 403, note 1.
[5] Cf. Dahn, *Könige*, vi^2, 88 ff., 126 ff.
[6] Cf. also H. v. Schubert, *Gesch. d. christl. Kirche i. Frühmittelalter* (1921), 176 f.
[7] Dahn, op. cit., v, 173, 186 ff., 193 ff., 200, 205, 206 ff., 216 ff., 221 ff.
[8] Ibid., 214.

chiefly on their large estates, by gaining important titles and dignities under Byzantine rule,[1] even though they did not themselves take public office. Beside them a new ministerial nobility arose, holding military as well as civil offices, and succeeded in obtaining rich landed property in Italy, especially from the Church. Both classes soon brought into dependence the mass of the smaller free landowners, who were in desperate straits owing to the chaos of war, and were therefore drawn into the sphere of the great estates. This was facilitated by the official authority of *duces* and *tribuni*, who were not only military leaders but ordinary judges, and who had also taken over the collection of taxes. Even though their offices might not be legally hereditary, in practice son often succeeded father. Common interests, especially of an economic nature, gradually united these two groups of nobles. Here also their duty as public officials was soon pushed into the background by their private feudal interests, as we see from the frequent rebellions of the Byzantine governors.[2] It seems, therefore, incorrect to speak of the old nobles as being absorbed into the new ministerial aristocracy; we should rather emphasize the fact that these feudal powers became independent of all public authority.

In England, too, the beginnings of feudalization do not belong to Norman times, but go back to the earlier Anglo-Saxon period, in which the monarchy was forced to create an upper stratum of military nobles, with definite economic and social privileges, in return for military tasks carried out on the king's behalf.

If we look more closely, we see that in this process, also, the decisive factor was not so much the royal office itself as personal military prowess and the economic advantages accompanying it. Not all royal servants and officials could rise to such heights, but only those who, in consequence of their estates and their military strength, were in a position to give protection to their neighbours.

The development of the power of this aristocracy and the beginnings of this feudalization of public authority were checked among the Franks by the appearance of a strong public official in their very midst, i.e. the mayor of the palace.[3] In their struggle with the great landowning nobility, Ebroin at the end of the seventh century,[4] and especially Charles Martel at the beginning of the eighth, once more established a strong central power. It was merely a political consequence of the actual power which they had already gained in the state, that after the office of mayor of the palace had become hereditary in the family of the Arnolfings (in comparison with whom the last Merovingian kings were of little importance), Pippin, son of Charles Martel, at a favourable moment in 751, seized the throne by a *coup d'état* and usurped the title of king. In the story of his mighty son's exploits, we may still note a reflection of that political metamorphosis. Einhard, his biographer, emphasizes as Charles Martel's special merit that he prevented the great lords from overpowering the whole Frankish state.[5]

The first Carolingian kings, Pippin and Charles the Great, continued and also profited by the work which had been begun by their great ancestors, Ebroin and Charles Martel. The fact that the latter succeeded in breaking the political

[1] Cf. Ch. Diehl, "Études sur l'administration Byzantine dans l'Exarchat de Ravenne 568–751," *Bibl. des Écoles Françaises d'Athènes et de Rome*, liii, 292 ff., 304 ff. (1888).

[2] Cf. Diehl, op. cit., 303.

[3] On the subject of this royal official, see Waitz, *VG.*, ii, 2^3, 83 ff., 397 ff.

[4] Cf. Waitz, op. cit., ii, 2^3, 401 ff., and A. Hauck, *KG.*, 1^2, 357 ff. = 1^4, 395 ff.

[5] *Vita Karoli Magni*, c. 2: Karolus, qui tyrannos per totam Franciam dominatum sibi vindicantes oppressit.

ring of the powerful aristocracy, and that after him the Arnolfings produced two such vigorous rulers as Pippin and Charles the Great, interrupted the process of feudalization in the Frankish kingdom for a century. But it proved irrepressible, and set in again with the partitions which were made in Charles's last years, and under his weak successor, Lewis the Pious.

There was a similar development among the Lombards in Italy. At the time when Charles Martel was curbing the nobles in the Frankish state, King Liutprand (712–744) succeeded in setting up a strong central authority in opposition to the particularist efforts of the nobles,[1] not only externally, by mastering the troublesome Dukes of Spoleto and Benevento and by setting up a united monarchy in Italy, but also internally, by suppressing the feudal leaders there. The orientation of his policy is shown very characteristically in two of his enactments. He opposed the alienation and misappropriation of royal estates, and forbade his officials (*gastalden* and *actores*) to authorize this without his sanction, or to be guilty of such an offence themselves.[2] Moreover, he laid down a particularly high wergeld for the royal *gasindi* if they were killed in his service.[3] It is clear that this positive protection for the defenders of the king's rights corresponds to the denial of such rights by the nobles, including the royal officials themselves, against whom the king thus defines his position.

The victorious extension of the external sphere of authority of these two great contemporaries gave them support against the rebellious forces at home. It must have been as instrumental in building up a strong centralized power as earlier unfortunate wars had been, here and there, in weakening the kingship. The fact that Charles Martel and Liutprand were bound together in ties of friendship, even though their spheres of influence in Bavaria were in direct conflict, is a proof of exceedingly statesmanlike insight. They held back wherever an external misfortune might have endangered their great task at home. This explains Charles's surprising refusal to help Pope Gregory III against the Lombards, who were threatening Rome. He did not wish to be involved in a war with the latter and to prevent them from doing what he himself claimed to do in his own country.

This development of power among the great men and the nobility could not but react on that stratum of the population which was originally the real basis of the state, i.e. the ordinary freemen. The view is still almost universally held that in the new German kingdoms founded on Roman soil from the fifth century onward, and still later during the Carolingian period and well into the eighth century, they remained on the whole undisturbed, in possession of all public privileges and exercising public duties[4]; that a primeval equality of holdings had been generally preserved as an "established rule", and that uniform average properties were to be found everywhere. Even those scholars who believed that there were greater varieties of land-ownership could not completely free themselves from this earlier view. "At the end of the folk migrations and for a long time afterwards, the centre of gravity of German social life was to be found in the class of freemen, who lived widely scattered in the Gaus and centenae on small but independent properties."[5] In view of the fact that this uniformity in

[1] See L. M. Hartmann, *Gesch. Italiens*, II, ii, 125 ff.

[2] *Leges Liutprandi*, 724, c. 59. *MG. LL.*, iv, 131. See also the same author, *Notitia de catoribus regis*, ibid., 180 ff. (a. 733).

[3] Ibid., c. 62, op. cit., 132.

[4] See Germ. edit., ii², 123 f.

[5] v. Inama-Sternegg, *DWG.*, 1², 81: 1, 72 = 1², 96.

German conditions of land-ownership was thus almost axiomatic in historical research, it is quite understandable that the *Hufe* should have been regarded as the normal standard of measurement. Because in the sources land is measured in *Hufen*, it was concluded that the normal holding of an ordinary free settler was a *Hufe*.[1] Scholars were so convinced of this that even the direct testimony of the sources which was, in fact, contradictory, since it bore witness to the existence of *Hufen* of various sizes, was interpreted as an indication of economic equality. These variations in the size of holdings were attributed to variations in the quality of the soil, which made it necessary to eliminate inequalities due to differences in productivity by varying the size of the holding.[2]

It was supposed, then, that this equality in the size of holdings disappeared in the end mainly as a result of the creation of great estates, the positive effect of which was to concentrate large tracts of land in the hands of one person, and its negative effect, the gradual sinking of the small free properties into dependence on these great landlords until they were ultimately absorbed.

A social and economic process of this kind undoubtedly took place. But the earlier theory [3] made a great mistake in concluding first that the process was not completed until Carolingian times; secondly, that up to then, or at any rate, during the German occupation, those original conditions were still to be found, which we may perhaps attribute to the earliest period of all; and thirdly, that this period tallied with the descriptions of Tacitus..

To-day we are justified in stating that all those causes, which von Inama and other scholars considered to have contributed to the process in question, were not set in motion for the first time in the eighth century, but were potent as far back as the days of Tacitus and probably considerably earlier. To reiterate: Tacitus tells us that the first appropriation of land did not proceed according to the principle of equal rights, but according to the dignity of the individual.[4] We learn from his description of early German society that there were strongly-marked differences within it, and in particular that the great estate was already in existence. Moreover, the theory of the Mark-association, which formed the main basis of the work of the earlier writers, is now untenable, at any rate in so far as the Mark-association was supposed to be a union of free settlers, with equal rights and joint ownership of the land. The economic and social support which it was presumed to give to the mass of the free population cannot in fact be proved. It could not have had a cohesive effect, since the individual at that time already possessed free rights of disposal over the land, and that not only in Roman territory.[5]

Those same causes which later led to a change in the conditions of land-ownership, above all the grants of land by the king, were as old as the kingship itself and as the capacity of the Germans for a settled existence. In fact in that earlier period of land appropriation and the beginnings of permanent colonization, they must have been even more widespread and far-reaching than they were later. For at that time the kings had more land to dispose of, since they were taking over

[1] See Waitz, *VG.*, ii, 1², 278 ff.; Brunner, *DRG.*, 1², 286 ff.; R. Schröder, *DRG.*⁵, 221 = 6th edit., 227, and Vinogradoff, *The Growth of the Manor* (1905), 141, 218.

[2] Waitz, "Die altdeutsche Hufe," *Abhandlg. d. kgl. Ges. d. Wiss. in Göttingen*, vi, 206 ff. (1854); Meitzen, op. cit., i, 77; v. Inama-Sternegg, *DWG.*, 1², 433.

[3] Inama-Sternegg, *Die Ausbildung der grossen Grundherrschaften in Deutschland während der Karolingerzeit*, 1878 (in Schmoller's *Staats- und sozialwiss. Forschungen*, I).

[4] See above 36 ff.

[5] See above, 40 ff.

the Roman domains and fiscal properties, and there was also much more unowned land.[1] Later on the royal estates were quickly diminished by rich gifts to the Church and also by the usurpation of the royal officials. A well-known and often quoted saying is attributed by Gregory of Tours to King Chilperic as early as the sixth century (561–584) : *ecce pauper est fiscus noster, ecce divitiae nostrae ad ecclesias translatae.*[2] King Dagobert I (d. 638) is supposed to have remarked likewise, *duces mihi et domestici spatiosas subripiunt villas.*[3]

In like manner the causes given by the current theory for the disappearance of the common freemen, i.e. the burdens laid on them by the state, especially the severe system of fines and compositions[4] and the obligation to do military service, were all in existence in early times. The former already existed in the days of Tacitus,[5] and the latter must have been especially felt during the migrations and in the strife which accompanied the land-settlements, while later on it must have become less heavy. Other causes, which must frequently have led to loss of freedom among the German peoples of Tacitus' time, must later have somewhat diminished, as for example the love of gambling, for which the Germans had a passion which the Romans could not understand.[6] After the introduction of Christianity this vice must have decreased, or must, at any rate, have been opposed, in so far as it led to a loss of freedom.

These facts lead to an important logical conclusion. If all these circumstances, which are acknowledged as having played a decisive part later, already prevailed in the pre-Carolingian period, then we may surely assume that they must already at that time have produced the effects which are attributed to a later period.

Moreover, it is necessary to take into consideration the nature of the material yielded by the sources at different times. It is naturally less full the farther back we go. In contrast to the Carolingian period, which is remarkable for its wealth of documents, the pre-Carolingian era is relatively barren. This is not simply due to the decrease in intellectual culture and in calligraphy, for the post-Carolingian period shows a similar decrease. The Church, to which we chiefly owe our documents, certainly had a determining influence in the matter, because in the Carolingian age its sphere of interest extended greatly with its many new foundations. The many monasteries, naturally, made richer sources available.

For that early period not even an argument *ex silentio* can be pleaded, for the existing sources are clear enough and give us an ample number of relevant passages. It is quite evident that the mass of freemen do not form a unity with no social differentiation, but are divided into different circles with a definite gradation. Not only is a distinction made between *maiores* and *mediocres*, but there are also *minores* and *minimi.*[7] These distinctions can be considered to imply differences in the extent of possessions,[8] and the *minofledi* of the Salic and Alemannic Laws can be explained as smallholders. They were not of inferior birth, nor were they entirely without property, but they had less property.[9] They were certainly not common freemen possessing the normal amount of land, but lesser landowners and small farmers, as the name itself indicates.

[1] See above, 40 ff.
[2] *Hist. Franc.*, vi, c. 46, *MG. SS. rer. Merov.*, i, 286.
[3] *Vita Eligii*, i, c. 17; ibid., iv, 683.
[4] See my *Wirtschaftsentwicklung d. Karolingerzeit*, ii, 2 f. = 2nd edit., 2 f.
[5] *Germania*, c. 12 and 21.
[6] Ibid., c. 24.
[7] See Germ. edit., ii², 129, note 160.
[8] Dahn, *Könige*, vii, 1, 178.
[9] Ibid., 180.

Reference has already been made to analogous conditions among the Alemanni, where, besides the above-mentioned groups and the *meliorissimi*, the *mediani* are mentioned as a definite grade of property-holders. Similarly among the Burgundians there were *optimates*, *mediocres*, and finally *minores* or *inferiores personae*.[1] But the latter did not make up the mass of the free population in this case either; for we find the term *populus mediocres*[2] used for the middle class, which shows that this group was to be regarded as forming the main body of the free population. Among the Visigoths, also, strong differences among the freemen can be traced in the sources. We find beside the *ingenuus* the *humilior*,[3] who, however, still had his *status libertatis*.[4] We also hear of *violiores personae*, who, like the *humiliores*, formed a stratum below the average or middle rank of freemen. The same phenomenon is observable in the east, in Bavaria. In the Bavarian Law, beside the *liberi*, there is also mention of a *minor populus*[5] or *minores homines*.[6] If we note the description attached to the former term,[7] it is clear that the *minor populus* does not imply only freemen, but implies less important people, some of whom were freemen. The theory that the *minor populus* meant "less free" men, i.e. freedmen, is improbable, because *libertas* is expressly mentioned,[8] and directly afterwards reference is made to *liberi* who are *pauperes*.[9] Thus, here, too, there were important differences of property among the freemen. The *Edictum Theodorici* bears witness to a stratum of poor folk among the freemen of the Ostrogoths,[10] and in the writings of Cassiodorus, too, the poor and economically less important are mentioned, and besides them a middle class (*mediocres*) between the rich and poor.[11]

The sources show strikingly the great differences in conditions of land-ownership that existed among the Lombards. In the Edict of Rothari, where no special regulations are laid down with regard to the wergeld of the various classes of the population, valuation is arranged *in angar-gathungi*[12]; i.e. according to the size of the property. From the fact that Rothari gives as the Latin translation for this *secundum qualitatem personae*, it has rightly been concluded[13] that the extent of a man's land was then coincident with the evaluation of his person; clearly at the time when land was being distributed, noble birth was a determining factor in the size of the property, as Tacitus has already told us.[14] The laws of King Liutprand show what differences there were in the landed property of the common freemen (*arimanni exercitales*), for here the wergeld of their *primi* was 300 solidi, but that of the *minima persona, qui exercitalis esse invenitur* was only half that amount, 150 solidi.[15] The laws of King Aistulf divide landowners into three classes: the rich, who possessed seven or more farms (*casas masaricias*); a middle class with no farms but with forty acres of land, and finally the lesser

[1] Lex Burgund., tit. ii, 2, and xxvi; also Brunner, op. cit., 343.
[2] Lex Burgund., tit. ii.
[3] Lex Visigot., vii, 6, 2.
[4] Ibid., ii, 1, 9.
[5] ii, 3; *MG. LL.*, iii, 282.
[6] ii, 4; ibid., 283.
[7] ii, 3.
[8] vii, 3.
[9] vii, 4; op. cit., 298.
[10] § 97: *MG. LL.*, v, 163.
[11] Var. i, 19: *MG. AA.*, xii, 24; iv, 39: op. cit., 132; iv, 40; minores fortunas, ibid.; v, 14: vires mediocrium, op. cit., 150; xii, 11: fortuna mediocrium, op. cit., 368.
[12] Edict. Rotharis, xiv, 48; also W. Bruckner, *Die Sprache der Langobarden*, pp. 40, 202 (1895). (*Quell. u. Forschungen z. Sprach- u. Kulturgesch. d. german. Völker*, by A. Brandl and E. Schmidt, lxxv.)
[13] Bruckner, op. cit., 40.
[14] See above, 196.
[15] Chap. 62, *MG. LL.*, iv, 132 (a. 724).

people (*minores*).[1] Similarly the merchants and traders, who had no land, fell into three categories: (1) *maiores et potentes*, (2) *sequentes*, (3) *minores*.[2]

The same differentiation had already appeared in England, where freemen are not to be thought of as having equal property in land.[3] In the laws of King Ine (688–695) there are regulations concerning the obligation to till *laenland* and the amount which the tenant has to leave sown on his departure is clearly laid down. It is quite clear that a hide cannot be taken as the average holding of a freeman; and this tallies with the information in Bede's *Ecclesiastical History* in which a property of ten hides is regarded as small (*possessiuncula*)[4] and an island is described as "little" because it contains only five hides.[5] In the laws of Aethelred (922–1011) the *liber pauper* pays a fine of thirty denarii[6] where the royal thane would pay 120 solidi.[7] It has been correctly emphasized that this *liber pauper* was a peasant, and that these free and independent farmers did not completely disappear and become dependent on lords.[8] The great differences in the size of the properties of the *liberi*[9] date from the early period, as the passages quoted above from Ine's laws prove.

Thus the general impression given by the sources for all the German states is that in the early period before the Carolingians there was already a wide differentiation within the class of common freemen. This fact is as obvious as are its causes. In particular, the social regrouping caused by the great estates is an international phenomenon, which can be observed everywhere and in all periods. It has already been pointed out that the same development is to be found in Ancient Egypt, in Greece and in the late Roman period.[10] The accounts of Libanius and Salvianus of Marseilles[11] depict analogous conditions in the East Roman Empire in the fourth century and in Gaul in the fifth century. The reception of freemen into the protection of great territorial lords (*patrocinium*) was often bought by the surrender of their peasant farms. These events were by no means confined to Roman territory, but are also to be traced in the Merovingian kingdom, in sources belonging to the sixth and seventh centuries. Freemen were enslaved and oppressed, and their property was absorbed, both by royal officials and by the great territorial lords (*potentes*). The small folk, the *pauperes* and *miseri*,[12] were especially affected. Exactly the same process was going on in the east of Germany. The *Lex Baiuvar.* shows how necessary it had become to make a stand against the enslavement of freemen.[13] Moreover, the majority of the free population was not equally threatened; it was primarily the poorer people who suffered. They were especially exposed to the caprice of the state officials and could offer least resistance.

[1] i, 2, *MG. LL.*, iv, 196.
[2] Ibid., § 3, op. cit.
[3] Vinogradoff, *The Growth of the Manor* (1905), 130.
[4] *Hist. Eccles.*, iii, 24, § 222 (Edit. English Society).
[5] Ibid., iii, 4 (a. 565).
[6] vii, 2, 4, Liebermann, *Ges. d. Angelsachen*, 1, 260.
[7] Vinogradoff, op. cit., 240, note 36.
[8] Ibid., 130.
[9] Thus, for example, nine freemen have ½ hide, two others have only 10 acres. Thanes are called *liberi* and have very little land (e.g. 30 acres). Vinogradoff, *English Society in the Eleventh Century* (1908), 415.
[10] See my *Wirtschaftsentwicklung der Karolingerzeit*, 2nd edit., 12 ff.
[11] Roth, *Feudalität u. Untertanverband*, 283 ff.
[12] See my collection of quotations, *Wirtschaftsentwicklung d. Karolingerzeit*, 2nd edit., 15 ff.
[13] Tit. vii, 4: *MG. LL.*, iv, 298.

Legislation to protect the peasantry was recognized elsewhere also as the political duty of German kings. King Theodoric the Ostrogoth opposed the oppression of the free peasants by the great estates in Italy [1]; and later King Totila took their part. But the rule of the Byzantines (553–568) led to the restoration of the Roman great estates in the celebrated Pragmatic Sanction of Justinian (554).[2] Within the extensive estates of the Roman Papacy a similar tendency may be observed. Gregory the Great (590–604) was obliged to send instructions to his officials forbidding the oppression of the peasants on his lands in Corsica and Sardinia,[3] and also in Sicily.[4] Matters were no better among the Visigoths. In the Visigothic Law we find numerous decrees against the enslavement of freemen.[5] We also learn that even in the time of King Receswinth (649–672) the royal officials, who were levying troops, took advantage of the absence of the Goths in the field to enrich themselves with their lands.[6] In particular, King Kindasvint (641–652) tried to alleviate the burdens of the common freemen and especially protected those " oppressed by poverty " from the severity of the law.[7] Finally, it has also been proved that in England the patronage of the great lords enabled them not only to bring freemen into dependence, but also to demand tribute and service from them.[8] In the laws of Ine (688–695), rules were laid down for the case in which a lord imposed labour services at will on his tenant over and above the rightful dues, or tried to increase these.

Thus the tendency to reduce freemen to serfdom existed long before Carolingian times, and laws for the protection of peasants were not first enacted by Charles the Great. The current theory gave rise to entirely false ideas, not only because it fixed too late a date for the origin of great estates, but also because it represented the general body of freemen as a union of economically equal persons. If, as has been shown above, there already existed considerable differentiation within the group, then it is understandable that the poor and unimportant people fell a prey to the might of the great territorial lords, and so lost their freedom. The social depression of common freemen was not general, however, but was limited to those who were economically weakest. Indeed, in my opinion, too one-sided a view has been taken of this social re-grouping, and hasty generalizations are to be avoided; the sources do not by any means give a general and objective picture of actual conditions. They naturally give a prominent place to negative results, such as complaints about oppression and enslavement, and the robbery of small owners by great ones. A closer examination should reveal also the positive importance of these events. The deterioration of patronage should not obscure its original importance as a means of security and protection. The regulations against existing abuses especially insist that small folk are not to be deprived of their right to seek voluntarily the protection of the great.[9] Those who were economically weak took advantage of this protection, in order that they might

[1] Edict. chap. 96, *MG. LL.*, v, 162, and Cassiodor, *Var.* iv, 39 and 40 (a. 507–511). *MG. AA.*, xii, 131 f.

[2] See above, 95.

[3] *Epp.*, v, 38 (a. 595); *MG. Epp.*, i, 324.

[4] *Epp.*, i, 39a, 42, 44 (a. 591); op. cit., 53, 61, 70.

[5] Cf. v, 3, 1; *MG. LL.*, sect. i, 1, 216; v, 7, 8; ibid., 237; ix, 1, 13; ibid., 360.

[6] Lex Visigot., ix, 2, 2, op. cit., 367.

[7] Ibid., xii, 1, 1: op. cit., 406.

[8] Cf. Laws of Ine, §§ 39, 50, 70, 76, ed. F. Liebermann, 1, 107 ff.; also Maitland, *Domesday Book and Beyond*, 259 ff., 282 ff., and Vinogradoff, *The Growth of the Manor*, 212 ff.

[9] See Germ. edit., ii[2], 134, note 197.

continue to exist and to endure the pressure of public burdens and in order to obtain help against the oppression and abuses of state officials.

It must not, however, be forgotten that entry into such a protective relationship, or commendation as it was called, did not necessarily involve a loss of personal freedom. The freeman remained free; he could give up that particular connection and seek the patronage of another lord.[1] It is also incorrect to think that commendation carried with it, as a matter of course, freedom from all public burdens, especially taxation and service in war.[2] But the territorial lord as patron did actually give protection before the law, because he had the so-called right of representation, i.e. he represented his tenants in their legal disputes with outsiders. He also watched over their summons to military service and saved them from the official excesses of the counts. He was able in particular to give them economic support by allotting land to them, or by giving individuals suitable occupation in the great and multifarious activities of his estate. Early Frankish [3] and Visigothic [4] documents and the earliest Bavarian land grants [5] all reveal the same state of affairs; poor men, unable to support themselves, "commend" themselves in order to live. The nature of the case is clearly seen in the characteristic terms used on the one hand by the Visigoths for those who were *in patrocinio*, and on the other hand by the Anglo-Saxons for the territorial lord and protector. The former was *bucellarius* or breadeater,[6] and the latter was *hlaford* or bread-giver.[7] Thus the economic position of countless freemen, who might otherwise not have been able to live, was improved.

The examples which used to be cited to prove that the burdens imposed by fines and compositions were the main cause of the asservation of freemen, also demand closer investigation. These are concrete cases of individuals who had no property and had forfeited their lives through inability to pay the fine for murder or theft. By means of pledging their persons (*obnoxiatio*) they could avoid the death which threatened them, because the lord to whom they were pledged could buy them off.[8] They were thus actually saved from death by their asservation. The social and political importance of this "surrender" of freemen has been exaggerated as regards both its prevalence and its practical consequences. It was not infrequently also resorted to by priests and monks, or men who wished to enter the Church, and also by those who were childless or aged and therefore wished to provide for their old age.[9] Nor should the expansion of the great estate by this means be exaggerated. If lusty men, willing to work, surrendered themselves, their economic strength was certainly not lost; new labourers and servants were by this means added to the great estate, a fact which must not be overlooked, in view of the importance of seigneurial farming in economic development as a whole. These surrenders ought also to be judged from the technical, economic point of view, for thereby they acquire a positive value. The law of survival of the fittest is here clearly illustrated. The great estates had not only a

[1] See my remarks in the *Zeitschr. d. Savigny-Stiftung f. RG.*, Germ. sect., xxxvi, 21.
[2] Cf. H. Brunner, *DRG.*, ii, 295.
[3] Form. Turon, No. 43, *MG. FF.*, 158.
[4] Form. Visigot., No. 36; ibid., 591.
[5] Cf. in Mondseer, *Tradit.-Buch.*, No. 16 . . . *UB. d. Landes ob. d. Enns*, 1, 10.
[6] Cf. *Lex Visigot.*, v, 3, 1; *MG. LL.*, sect. i, 1, 216.
[7] Cf. *Laws of Ine*, c. 67, ed. Liebermann, op. cit., 1, 119.
[8] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, ii[2], 11.
[9] See the sources quoted by me in that work = ii[2], 10.

negative and differentiating effect on the general body of freemen, but also a positive and unifying influence.

It will be possible correctly to appreciate these conditions if the legal position of the common freeman of that period is more precisely defined. On this point also there are no clear or incontestable theories. First of all, let us consider the question of military obligation, service in the army. During this period, and until the Carolingian era, the former liability of all freemen to render military service persisted. It has already been pointed out that the Carolingian armies did not consist merely of professional soldiers (vassals), but that the old general obligation to give military service[1] still prevailed, a theory which has since been confirmed by Fehr's researches into the right of arms possessed by the peasants in the Middle Ages.[2] The old view that in the Merovingian period this obligation was limited to the royal *leudes* and was incurred in return for the bestowal of royal benefices has already been refuted.[3] Nor did it depend on the possession of landed property. It is true that all freemen were not bound to carry out military service in person. It would have been absurd to demand it from those who were destitute, as it brought no pay with it at any time, and the soldier had not only to equip but to feed himself.

It is now generally assumed that Charles the Great lightened the military duties of the poorer freemen by demanding personal service only from those who had a definite amount of land (three to four *Hufen*), while those who were less well off formed groups, each of which had to equip one of their number for service in the field. This was actually represented as one of the Emperor's great political measures in favour of the common freemen and directed towards the preservation of their independence. But I have already tried to prove that, on the contrary,[4] these decrees were no innovation of Charles the Great, but rather a repetition of fundamental principles which were already in force and, in particular, that the hypothesis on which the theory was based, namely that a *Hufe* was the normal holding of each man, was incorrect. The body of freemen did not all possess equal holdings, but were very differently graded. At this time, too, in individual cases military service was based on the amount of a man's property, though in Merovingian times we have no statement as to its extent. There is more information for pre-Carolingian times. A passage in Gregory of Tours [5] shows that the poor (*pauperes*) did not serve in the army, or at any rate were favoured in this respect. Furthermore, in another passage,[6] when depicting the difficulties of crossing a river during a campaign, he distinguishes between the *robustiores, inferiores et pauperes, qui cum his erant.* The reference is to a difference in equipment and a contrast between the rich and distinguished and the less important people.[7] It is clear from Gregory's description that many were on horseback. Similar distinctions are made in other pre-Carolingian sources. In the regulations as to the punishment of those who made trouble on a campaign, the Bavarian Law expressly contrasts the *minores homines* [8] with the rest, and among the Lombards, according to a law of Liutprand in 724, the fine for a *minima persona,*

[1] *Wirtschaftsentwicklung der Karolingerzeit*, ii, 22, note 2 = 2nd edit., 22, note 4.
[2] *Zeitschr. d. Savigny-Stiftung f. RG.*, xxxv, 117 ff. (1914).
[3] Waitz, *DVG.*, ii, 2^3, 208 ff.
[4] *Wirtschaftsentwicklung d. Karolingerzeit*, ii, 18.
[5] Waitz, *VG.*, ii, 2^2, 209, note 2.
[6] *Hist. Franc.*, x, 9; *MG. SS. rer. Merov.*, i, 417.
[7] Waitz, *VG.*, ii, 2^3, 211, note 3. [8] Tit. i, 4; *MG. LL.*, iv, 283.

quae exercitalis homo esse invenitur was fixed at 150 solidi, while the *primus* paid double.[1] I have alredy discussed this, as well as the gradation according to property in exemption from military service.[2] The *minimi homines* who had no land were to perform compulsory duties (three weekly) [3] for their count during his absence on a campaign. Aistulf's laws (750) show that military equipment was regulated according to three degrees of wealth.[4]

For my assertion that Charles the Great's so-called " reforms " really reflect an earlier privilege, I rely especially on the *Capitula de expeditione Corsicana* of 825, at the end of which there is mention of the *antiqua consuetudo* to be observed by the Counts.[5] Contrary to other interpretations,[6] the fact must be emphasized that in the *Capitula* the stress is not on *comitibus*, but on the fact that in exemptions the counts are to keep to the old custom laid down in the *Lex Langobardorum*.[7] Moreover, the whole decree is directed only against the counts and it can therefore hardly be assumed that their right of exemption had to be especially confirmed, perhaps because it was being impugned by others. This decree was not to the advantage of the counts, but was directed against their breaches and evasions of the *antiqua consuetudo*, as is clearly seen from a comparison with the contemporary *Memoria Olonnensis*. Finally, I must point out that the whole system of *adjutorii* was not a new creation but an old German privilege. Cæsar tells us that the Suevi put a thousand armed men into the field every year, while those who remained at home had to maintain them.[8] In King Liutprand's law of 726, already quoted, the same principle occurs again, i.e. the alleviation of a man's military service depended on the size of his property; and those who had no land did forced labour for the royal officials (counts and reeves).[9]

This system was the necessary consequence of that economic inequality of freemen, of which we have evidence long before Charles the Great, and which gave rise to a gradation even in military service. It is certain that this economic differentiation gradually led to a class distinction in the right to bear arms. " Poverty which did not allow the peasant to serve, or allowed him to do so only if he were supported by others, depressed him socially; and this social depression gradually led to a depression in legal status as well."[10] The first signs of this decline are not to be found in the *Capitulare Missorum de exercitu promovendo* of 808 in which those owing service are divided into *liberi* and *pauperes*; on the contrary, the division existed long before this, as the passages quoted above copiously demonstrate.

This great change in the right to bear arms possessed by the common freemen, and in their military obligations, was certainly promoted by the causes mentioned by H. Delbrück. Undoubtedly it " was important for the military leader that he should gather professional soldiers round him, instead of troops of citizens and peasants." But it is not right to assume that there were only infantry in early Frankish times, whereas there was an army of cavalry in the Carolingian period, or to think that a great change must have taken place under Charles Martel. Later, in dealing with the system of *beneficia*, it will be shown from the sources that the

[1] Chap. 62, *MG. LL.*, iv, 132.
[2] See ibid, 131.
[3] Ibid., c. 83, op. cit., 140 f.
[4] See above, 218, note 7.
[5] *Wirtschaftsentwicklung der Karolingerzeit*, ii², 19.
[6] See Germ. edit., ii², 142 ff.
[7] This is clearly seen in the introductory sentence to the whole decree.
[8] *Bell. Gall.*, iv, 1.
[9] c. 83, *MG. LL.*, iv, 140 f.
[10] Fehr., op. cit. 120.

process was really quite different.[1] Here it will suffice to point out that owing to their economic differentiation the military importance of the common freemen was also diminished, and those classes economically capable of performing the heavy cavalry service and of maintaining a number of poorer men in the field were bound to come to the fore. These were the great territorial lords, ecclesiastical and secular.

From the late Roman times onwards, these private lordships raised and maintained troops of private soldiers, and made use of them in their private feuds and in the political party-fights, which began in the Merovingian kingdom in the sixth century.[2] Charles Martel was able to re-erect a strong central authority only by employing these means, and when the Carolingians gained control over the kingdom, they tried to make these feudal organizations serve the needs of the newly-revived royal power. The measures of Charles the Great, and his much extolled laws for the protection of the peasants, were intended to check these feudal tendencies by strengthening the old foundations of the army system. At the same time they show how marked those tendencies already were. A similar process is observable among the Ostrogoths in Italy under Theodoric the Great and Totila, among the Visigoths under Kindasvint and Receswinth, and also among the Anglo-Saxons.[3]

Beside army service, the most important public duty of freemen was judicial service, i.e. attendance at the moot (*Dingpflicht*). Every free subject had a duty to attend court irrespective of his property in land.[4] Freedom as such gave the right to take part in the national council.[5] All freemen had a place in the public court of justice, though not the privilege of pronouncing judgment. The witness for the community in cases involving property in land had himself to be a landowner. Eligibility to give evidence for the community was conditional on the possession of a personal wergeld[6]; and the witness had to prove his solvency. Therefore, a certain measure of wealth in land and goods was demanded as well as personal freedom. As a special guarantee of his evidence the witness had to have in his possession the amount of a witness's fine. Only a solvent person, who pledged his property as security for the truth of his statements and who himself might be subjected to the evidence of the community with regard to his own land, was entitled to act as a witness.[7]

It is certainly true that the witness's solvency was the main criterion of his eligibility, but was it the sole criterion? If not only the Bavarian, Lombard, and Frankish laws but also the Visigothic laws are examined, it becomes obvious that another fact has to be taken into consideration. The Visigothic Law expressly takes up the position that a man oppressed by want might be induced to swear falsely because he could not endure poverty.[8] Here the material independence of the witness for the community seems to be emphasized; and this is in accord with the later Frankish *Capitulare de iustitiis faciendis* (811–13), which orders that witnesses shall be chosen from the *optimi pagenses*, with the qualifying clause: *et non liceat litigatores per praemia falsos testes adducere*.[9] The danger of false witness owing to bribery was greater in the case of poor men without property,

[1] See below, ch. ix.
[2] W. Sickel, "Die Privatherrschaften im fränkischen Reich," *Westd. Zeitschr.*, xv, 111 ff.
[3] See above, 217.
[4] R. Sohm, *Die Fränk. Reichs.- u. Gerichtsverfassung*, 336 ff.
[5] Ibid., 353. [6] Ibid., 356. [7] Ibid., 357.
[8] *MG. LL.*, i, 1, 96. [9] *MG.*, Capit. i, 176, c. 3.

not only because of the temptation of material advantage,[1] but also because the lower strata of the population were more dependent and unprotected.[2]

This also accounts for the fact that the *viles personae* as well as the *infames* were excluded from the privilege of giving judgment, i.e. it was not because the *viles* had no legal privileges.[3] Hence we find that *boni homines* do give judgment; these are not identical with "free people" irrespective of property in land, nor can they be contrasted with the *optimi pagenses*[4]; they are to be understood as being those members of the community who owned land.[5] Here, then, is the link with conditions in the late Roman period. The term *boni homines* is first found on the monuments of the Roman population,[6] and later it was extensively used in the Frankish kingdom. The decrees of the Visigothic Law, quoted above, are founded on Roman law.[7] Late Roman systems must have persisted at first in provincial territory; from thence they soon penetrated into the German districts, where they found a natural basis in the economic dissolution of the body of common freemen, and where they secured some economic alleviations for the poorer among these. It is true however, that some of the freemen thereby lost their old importance as witnesses for the community in the court of justice, and thus also lost their social prestige, a fact which must have further accentuated economic differences.

The degradation of this poorer stratum of freemen increased progressively; and a change is noticeable even in the most important function of the court, that of "finding the law". This change has been usually attributed to Charles the Great, and the limitation of the old *Dingpflicht* was supposed to be an important innovation in favour of the common freemen. He was considered to have shown great solicitude on their behalf by the introduction of permanent jurors, the *scabini*, and to have brought about an important political reform by relieving them of their old obligation to appear regularly in the folk moots.[8] Doubt has already been thrown on this theory by recent research into the history of the *scabini* as an institution.[9]

Actually *scabini* existed long before the time of Charles the Great, and these were not simply *Rachimburgen*. In one of Charles's decrees, issued at the beginning of his reign, the *centenarii* are forbidden to hold too many folk moots on account of the poor. They were rather to limit their courts to the *maiores natu* and the necessary witnesses, so that the poor might be obliged to come to court only two or three times in the year. This practice, however, is to be found already in the sixth century. The sources make it clear that the *maiores natu* or *seniores* were used as *scabini* together with the *judex* to "find the law",[10] and that at that time the finders of law in the count's courts did not include the whole body of freemen, occupants of the courts of justice, but only a small number of permanent assessors (*Beisitzer*). Thus the institution of *scabini* was undoubtedly already in existence before the

[1] See also Lex Visigot., ii, 4, 6.

[2] See *ibid.*, ii, 4, 7: si forte postmodum favore, terrore vel munere pulsatur . . . dicat se idem testis falsum dixisse testimonium, op. cit., 1co.

[3] Sohm, op. cit., 354.

[4] Op. cit., 359.

[5] Waitz, ii, 1^3, 273 ff., and ii, 2^3, 142 f.

[6] See Waitz, *VG.*, ii, 1^3, 274, note 1; also W. Sickel, "Die Entstehung d. Schöffengerichts.," *Zeitschr. f. RG.*, vi, 52.

[7] Zeumer, *MG. LL.*, sect. i, 96, note 4.

[8] See R. Sohm, *Fränk. Reichs.- u. Gerichtsverfassung*, 374, and H. Brunner, *RG.*, ii, 221; R. Schröder, *DRG.*, 6th edit., 179.

[9] Germ. edit., ii^2, 148 f.

[10] W. Sickel, "Die Entstehung d. Schöffengerichts.," *Zeitschr. d. Savigny-Stiftung*, vi, 50 ff.

time of Charles the Great, however varied the names for it may have been.[1] As already explained, this change was bound to take place as soon as the poor were precluded from acting as witnesses for the community. It is certainly significant that a Capitulary of the time of Lothar I (832) lays down the same qualifications for the *scabini* as we have noted above in the case of the community-witness. They were not to be *viles personae et minus idoneae* but *nobiles sapientes et deum timentes*.[2] The *Capitulare* of Lewis the Pious in 820 proves that *nobiles* signify the renowned and wealthy.[3] The reason why the *scabini* were to be chosen from the *meliores* is to be found in another *Capitulare* of the same king in 829. This attacks the *scabini* who *propter munera* gave unjust judgment, and insists that in future magistrates must not sell their justice.[4] For that very reason *viles personae* should not become *scabini*, because they were less able to withstand pressure from the counts.

Thus the Carolingian laws clearly aimed at freeing the poor, the *pauperes*, from the burden of being summoned too frequently to the moot,[5] and were not so much concerned with the whole body of common freemen. Charles the Great was attacking the arbitrary will of the officials, especially the counts; and in this he followed an earlier royal practice of Merovingian times. The Edict of Chilperic (561–584) had already made a stand against the excesses of the counts in courts of law.[6] The evidence of the decrees of contemporary councils is also to be noted, as when at Tours in 567 an attack was made on the *iudices* (i.e. counts)[7] *qui pauperes oppremunt*.[8]

On the whole, it is clear that the great mass of the free population had undergone considerable changes even in pre-Carolingian times. It was not that the rise of the great estates and the heavy burden of public judicial service first began to oppress them during the Carolingian period, so that Charles the Great had to protect them by means of reforms and innovations in the constitution. The main factor in the whole matter was the economic disintegration which had been taking place from the time of Tacitus. If at that early date there were already important differences in property, especially in property in land, and if some freemen had already sunk into poverty, their lack of productive power must have brought about a considerable alteration in their public rights and duties. Their social and political decline was the necessary consequence of their economic degradation, and this also weakened their power of resistance. This great change, however, did not originally begin with the reorganization of the army in Carolingian times, which prepared the way for a division of labour between war and peace, and in post-Frankish times deprived the now unwarlike peasant of the right of bearing arms and set an hereditary soldiery over him. That this could happen so soon is the best evidence of the fact that freemen had scanty support from that organization which has so often been regarded as the effective protector of their social position, namely the Mark-association. We never find any occasion where the Mark-association was able to protect the common freeman from that disintegration and partial degradation of his class.

With regard to the question of the freeman's wergeld, the definite amount fixed uniformly for all common freemen has for long been taken as important

[1] See Germ. edit., ii², 150.
[2] *MG.*, capit. ii, 64, c. 5.
[3] Sohm, op. cit., 377, note 18; *MG.*, capit. i, 295, c. 2.
[4] *MG.*, capit. ii, 15, c. 4.
[5] *MG.*, capit. i, 214, c. 4.
[6] Ibid., i, 9, c. 8.
[7] See Waitz, *VG.*, ii², 150 ff.
[8] *MG.*, Concil., 1, 135, c. 27.

evidence for a uniformity of holdings.[1]. But however attractive this conclusion may appear at first sight, it does not hold water. A glance at the wergeld of the nobility should have shown this, for the nobility, and consequently the big land-owners, also had a definite sum fixed for them in various folk laws. But it would not occur to anyone that all these estates owners had much the same amount of land. There is no doubt that there were considerable differences between them, just as there were within the great body of common freemen.

It has, for some time, been noticed that there was some kind of connection between the extent of a man's land and the amount of his wergeld.[2] According to Lombard law the wergeld was determined in *angargathungi*, according to the amount of land held, i.e. *secundum qualitatem personae*.[3] And in Alemannic documents of the Carolingian period, where gifts were made to the Church, the price for possible repurchase was fixed according to wergelds.[4] These phenomena have not so far been fully explained. Anglo-Saxon conditions may perhaps throw some light on the matter. Here we see clearly that the extent of a man's land had a definite influence on the amount of his wergeld. In the Laws of Ine [5] (688–695) the Welshman with one hide paid a wergeld of 120 solidi; if he had half a hide, he paid 80 solidi; and if he had no land, he paid 60 solidi. It is noteworthy that in the same Laws the man with five hides paid 600 solidi, i.e. exactly five times as much.[6] This throws light on the Alemannic documents. The value of the *Hufe* at the time of the folk-laws, according to records of contemporary purchases of land, must have been far below the freeman's wergeld.[7] To mention only a few characteristic examples, in the St. Gall formularies we find that in one grant of a *Hufe* of land a third of the wergeld is fixed as the repurchase price.[8] In a land charter of the same monastery in 797 the wergeld of a freeman (160 solidi) is fixed as the repurchase price of a gift of five *Hufen*.[9] It is true that this redemption-price cannot be taken as conclusive and direct evidence of the value of the property; probably more favourable conditions were offered in order to induce the giver to part more readily with his land.[10] But all the same, there is a striking degree of coincidence between these fixed sums and the minimum property on which the army-service of the freemen was based, i.e. three to four *Hufen* among the Franks, and three to five among the Anglo-Saxons.

Nevertheless, it is of course impossible to fix a definite schedule for all the many variations in the size of estates, more especially in view of the fact that an individual's wergeld might change and be raised in consequence of his official position in the king's service. It was quite sufficient to fix a uniform sum as the norm for the different classes. This was indispensable, because the criterion for wergeld was not merely the man's property but his own personal standing. It is now, for the first time, possible to understand the real meaning of the phrase frequently found in deeds of gift, *hoba compositionis meae*. The value of the *Hufe* might vary considerably even within the same district[11]; and a much closer approximation

[1] See Brunner, *DRG.*, 1^2, 286 (1906), and Inama-Sternegg, *DWG.*, 1^2, 153 ff. (1909).
[2] See Waitz, *DVG.*, ii, 186, and "Die altdeutsche Hufe," *Abhandlung. d. Götting. Ges. d. Wiss.*, vi, 185 (1854).
[3] Brunner, op. cit., note 28, and above, 215.
[4] Ibid., 287, note 29.
[5] Ed. Liebermann, 1, 103.
[6] *Ine*, xxiv, 2; Liebermann, op. cit., 101. Seebohm has dealt fully with this, without, however, recognizing these economic connections (*Tribal Custom in Anglo-Saxon Law* (1902), 364 ff.).
[7] Inama-Sternegg, *DWG.*, 1^2, 154.
[8] *MG. FF.*, 407 f.
[9] *UB., v. St. Gall.*, 1, 134, note 143.
[10] See Brunner, op. cit., 287, note 29.
[11] See v. Inama-Sternegg, *DWG.*, 1^2, 715 ff.

to the real value was thereby expressed. Thus we see that the wergeld within the different classes of society was based on a uniform norm, but was calculated for each individual separately, according to his property in land and goods. The poor freeman did not pay the same amount as a rich member of his class. On this account the burden of the system of composition cannot have contributed to the social depression of common freemen to the extent that was formerly assumed; though, of course, the rich freeman could more easily endure the higher sum fixed in his case than the poor freeman could his minimum.

These conclusions give us a new view of the positive aspect of this social development. New sources of accumulating wealth are clearly indicated here. The possessor of five *Hufen* had a much higher wergeld than the owner of one *Hufe*. In all cases where it had to be paid, not only for murder but for any injury, he obtained a much larger sum that the small freeman, and thus became not merely economically stronger and more secure, but also socially more important and esteemed. Hence there arose new opportunities for social and legal advancement. If a less-well-off freeman with perhaps only two *Hufen* gradually acquired more, he would, on reaching the lower limit for army service (three to four *Hufen*), be accepted in the more highly respected class which was personally liable for that service. This is clearly seen in the Norð leoda Laga (*c.* 920–954); when a freeman (*ceorl*) became so well-off that he owned five hides he was to be considered worthy of a thane's privileges.[1]

This probably provides a solution to the vexed question of the *nobiles* in Bavaria.[2] We have already seen that the freemen there were divided and that the *minor populus*, the freemen who were less well-off, were mentioned separately. On the other hand, a synodal decree laid down that the witnesses in the case of a false oath should be taken only from among the *nobiles*.[3] This term certainly does not include only the members of the six prominent genealogiæ of the aristocracy. If we consider that in other cases too only the *meliores* [4] (i.e. men of property) are allowed to give testimony for the community, there is much to be said for the view that *nobiles* and *meliores* are equivalent terms. This would explain the fact that in the earlier Salzburg sources, where the *nobiles* are often mentioned,[5] they appear as donors, in a way which is not very likely among common freemen.

These facts show how radically economic development and the change in conditions of land-ownership which accompanied it, must have altered the earlier social organization. Naturally, however, this immense process of internal reorganization did not confine itself to the freemen alone. It must be remembered that the common freemen were not merely being depressed; their numbers were also constantly being added to from below. Moreover, personal freedom was not lost by entering the combine of the great estate.[6] I have shown elsewhere [7] that the number of half-free men and serfs who appear in the Carolingian period

[1] Liebermann, *Gesetze d. Angelsachsen*, 1, 461, also Seebohm, *Tribal Custom*, 368, and Chadwick, *Studies in Anglo-Saxon Institutions*, 80 ff. The latter also points out (403) that a similar process may be seen in Norway, where the *bóndi* could become *höldr*.

[2] See above, 215.

[3] *MG. LL.*, iii, 486, § 2.

[4] See above, 221.

[5] See my remarks in *Wirtschaftsentwicklung d. Karolingerzeit*, ii², 69 ff.

[6] Seeliger, *Die soziale und politische Bedeutung der Grundherrschaft im früheren MA.*, 1903, vi, 139 ff.

[7] *Die Wirtschaftsentwicklung der Karolingerzeit*, ii², 27 ff.

cannot be due only to the depression of the common freemen, but that, on the contrary, there is evidence of a large-scale upward movement of the unfree classes. This came about in various ways. It took place unlawfully by the escape of *coloni* and *servi*, who ran away from their obligations to the great estate, or refused their service owing to new demands on its part; or by resistance against oppression, and arbitrary assumption of freedom (self-emancipation); and it happened lawfully by means of manumission by the lord. In particular, I pointed out the extraordinary number of formulae for charters of manumission which have survived. My view was also strengthened by the general stratification of the population, revealing on the one hand a small increase in serfs in the Carolingian period, on the other a steadily growing number of freemen everywhere, despite the tendency to asservation, which, as we now know, had been at work for centuries, even from Roman times. The status of freemen did not by any means remain intact from early times until the age of Charles the Great.

This leads perforce to the assumption that the free class, which had long been threatened with extinction, must have found new sources of recruitment; the gaps created by outgoers must have been continually filled up by newcomers. Asservation in pre-Carolingian times did not affect Neustria only, nor was the connection between Neustria and Austrasia a loose one.[1] It is impossible to-day to assume that Austrasia did not become familiar with the progress of Neustrian civilization until Carolingian times and that it was then, for the first time, forced into the same line of social development. Neither can we maintain that the Merovingians did not realize their tasks as rulers and that the Carolingians were the first to attack these tasks vigorously, for it is increasingly clear that the first great Carolingians followed the lines of Merovingian policy.[2] Nor is it true that the power and influence of the church in Austrasia had remained unimportant and that the hierarchy only developed into one of the most influential political factors in the Carolingian period, thereby entering the new national aristocracy and causing, as it had done long before in the western kingdom, considerable changes in social and political conditions. As a matter of fact, Austrasia was not completely separated from Neustria in the early period, as it was later; Theuderic (511–533) ruled over a considerable part of the western territory. Theudebert (534–548), the most powerful Merovingian after Clovis, reigned in the east and found support in the Church.[3] Then for a time Clothar I (555–561) united the whole kingdom again. The ecclesiastical aristocracy played an important part in Austrasia after Sigibert's death (d. 576).[4] Thus the arguments by which it is sought to prove that the social development of Merovingian times differed from that in the following (Carolingian) period are without validity. A recent historian of that period has made the following comment, "under Theudebert the main features of the whole medieval period of German history are already foreshadowed."[5]

Like the economic disruption of the class of freemen, the upward movement of the lower social classes was also not limited to the west. *Liti* and men who had gained their freedom, and even unfree men, were made counts by the Merovingians.[6] It emerges from the *Lex Salica* that not only did the semi-free hold the

[1] See v. Inama-Sternegg, *DWG.*, I, 227 f. = 1^2, 304.
[2] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, ii, 15 ff., and above, 219, and 222, ff.
[3] See W. Schultze, *Deutsche Geschichte*, ii, 121.
[4] See A. Hauck, *Kirchengesch.*, 1^2, 152 ff. = 1^4, 157 ff.
[5] W. Schultze, op. cit., ii, 122.
[6] Brunner, *DRG.*, ii, 169.

office of *sakebaro*, but the *pueri regis*, i.e. the personal servants of the king, were also for the most part freedmen.[1] This is also shown in the Ripuarian Law, where the *puer regius* is placed on the same level as the freedman (*tabularius*),[2] and where it is also stated that he could hold the office of count. In this connection it may be recalled that Tacitus, speaking of the freedmen (*liberti*), expressly says that among the German peoples who were ruled by kings they had risen to some extent above the freemen and even above the nobility (*nobiles*).[3]

As a matter of fact, men who had acquired their freedom often played a very important part, even in pre-Carolingian times. In order to understand their general importance it is not sufficient merely to examine their legal position. This has, indeed, been done often enough,[4] but their economic and social importance has not even yet been properly estimated.[5] Research in this field resulted in extraordinarily self-contradictory conclusions. It was assumed that the common freemen lost their old position in the state and were for the most part degraded, and that the number of unfree and half-free persons was constantly increasing. Surely it is unlikely that these large groups remained uninfluential. And there is another inherent contradiction. We have already seen that in that early period, when a strong monarchy was developing, the King's service played an important part in creating a new aristocracy independent of birth.[6] If, then, *liti* and freedmen could and actually did occupy the most important royal offices, such as those of count and *sakebaro*, how can it be supposed that this powerful class nevertheless had no political and economic influence worth mentioning? Such a position seems even less likely when we consider that at that very time there was an increase in the number of private followings, private armed forces were maintained, and the system of *beneficia* was beginning,[7] in all of which developments the *liti* and freedmen had an important share. At the summons of their lords the *liti* accompanied them on their campaigns; we find them among the *antrustioni* and the *pueri regis*, whose importance in the growth of vassallage has been shown in detail by Guilhiermoz.[8] And the *leudes* were not only free tenants, but to some extent subjects who stood in a particular relationship of service to the king.[9] The designation *ministeralis* was also frequently used in this early period for the servants of the king; and we find *libertini* among them,[10] as also among the *milites*, an expression which at that time described not a class but an office (*militia* = *ministerium*).[11]

This great social advancement of freedmen and semi-free is no mere theory, but may be traced in numerous sources. It is most obvious among the Visigoths. There freedmen not only disobeyed their former lords and withdrew from their protection (*patrocinium*), but tried to be their equals and took advantage of a

[1] In Tit. liv, 2, for the murder of a *sakebaro* "qui puer regius fuit" a fine of 300 sol. was fixed, i.e. three times the wergeld of a *litus*.

[2] Tit. liii, 2.

[3] *Germania*, c. 25.

[4] See H. Brunner, *DRG.*, 1^2, 354 ff., and R. Schröder, *DRG.*^{5}, 231 ff. = 6th edit., 239 ff.

[5] See Germ. edit., ii^2, 160 f.

[6] See above, 197.

[7] See below, Chapter IX.

[8] *Essai sur l'origine de la Noblesse en France*, 56 ff.

[9] See Waitz, *VG.*, ii, 1^3, 348 ff., and Brunner, *DRG.*, 2, 11, note 10, and H. Delbrück, op. cit., 2^3, 422 (1921).

[10] See Waitz, *VG.*, ii, 2^2, 113, collected passages, and *MG. FF.*, 160, note 2, in the appurtenances: *libertinis, ministerialis*.

[11] Waitz, *VG.*, ii, 2^2, 113, note 2.

knowledge of their political plans to denounce them to the king, who then actually put the freedmen in the position of judges over the accused. We see how great a danger to the nobility were these freedmen, who had climbed to offices at court, and how the nobles, as soon as they gained power over the monarchy, tried to protect themselves by laws.[1] Obviously the monarchy had found in the freedmen a weapon which it might use successfully against an increasingly powerful aristocracy.

The same process was occurring in the Frankish kingdom, where traces of similar endeavours are evident. Clothar II's famous regulation, in his Edict of 614, concerning the appointment of judges (*iudices*) has already been interpreted as a concession to the nobles—a safeguard for the aristocracy against the power of the king's officials.[2] It was not merely concerned with preventing the appointment of an alien to the office of count[3]; the explanation of the principles contained in the edict shows that in future the poor and the propertyless in particular were to be excluded, because they could give no compensation if they abused their office. When it is remembered that according to the Salic and the Ripuarian Laws freedmen could also hold the office of count or *sakebaro*, and that up to that time they were chiefly drawn from the royal household,[4] the significance of this political concession made by the Frankish king to his nobles at a moment when (as in Spain) they were becoming very powerful, may perhaps be better understood. The regulations in the Visigothic Law make this particularly evident.

A further commentary on the matter is found in later events. After the fall of the great mayor of the palace, Ebroin (670), who had protected the monarchy against the insubordinate nobles, the latter forced important concessions from the king, in order to prevent any further infringement of their power, and it is significant that they referred to that same clause in the Edict of Clothar II.[5] On this occasion we find in ecclesiastical sources, which are extremely indignant at Ebroin's procedure, a characteristic explanation of his aims. They call him a royal servant (*miles*), and accuse him of favouring persons of low birth, while violently attacking the aristocracy.[6] In the noble circles from which this description is derived, Ebroin himself was called a low-class upstart.[7] This factious distortion of events shows clearly the essence of that great antagonism; for it is obvious that among the Franks, too, the king had found in the faithful servants whom he had appointed to influential offices an effective means of protection against the superior power of the nobility. The freedmen and *liti* must have been particularly well adapted for this purpose, especially for employment in official positions.

It is here that we must seek the roots of the later *ministeriales*. In Carolingian times the need arose for a staff of officials, whose position involved both self-reliance and loyalty and "could be held only by personally dependent (i.e. not fully free) men, as freemen would have been too independent and might easily have refused to be at their lord's disposal."[8] The beginnings of this process,

[1] See especially the decrees of the 13th Council of Toledo (683) in Dahn, op. cit., vi², 185.
[2] Brunner, *DRG.*, ii, 169, note 61.
[3] C. 12.
[4] Brunner, op. cit., note 60.
[5] See *Passio Leodegarii episc. Augustodun.*, c. 7, *MG. SS. rer. Merov.*, v, 289, note 3.
[6] See Acta s. Ragneberti. Bouquet, *Recueil*, iii, 619, *MG. SS. rer. Merov.*, v, 209, new edit. (Krusch), where indeed the reading *miles* does not occur.
[7] See Bonell, *Die Anfänge des karoling. Hauses*, 156.
[8] Keutgen, *Vierteljahrschr. f. Soz. u. WG.*, viii, 1 ff., esp. 539 ff.

together with the economic and social conditions on which it was based, were to be found in pre-Carolingian times. Service in the house of a noble, and especially the king's service, caused the *liberti* to rise in the world; it also gave them a share in the service of the state and in this way they became the ancestors of German officialdom.[1] This can be seen not only in the legal offices of count and *sakebaro*, but also in the administration of finance and of the domains. Merovingian sources show that not only the office of *cubicularius* but also most other episcopal appointments were filled by freedmen.[2] Finally, in military service the freedmen and *liti* were a continual source of supply for troops, for we find them among the *pueri regis*, the *antrustioni*, and the *bucellarii*.[3]

In the same way the freedmen and the half-free became increasingly important among the Lombards in Italy, for the *gasindi*, who were entrusted with public office, were largely composed of these.[4] The economic equipment of these semi-free and freed men with land, alone made possible their advancement. Tacitus tells us of various German army-leaders and kings who kept round them crowds of freedmen and protégés (*clientes*).[5] In one passage he states that these men had settled on land in Pannonia.[6] In Merovingian times, moreover, the *leudes* and *gasindi*, the vassals, received land from their lords; the lords here had a direct motive for bettering their vassals' position; they did so not merely to reward them for their service, but to render them economically capable of performing it.[7]

Nor were these officials, with their closer connection with their lord, alone in managing to improve their economic status by obtaining a *beneficium*; the economic position of other freedmen also changed for the better. Too much has been made of Tacitus' remark that these *liberti* did not rank much above the unfree and were of little importance.[8] Tacitus, a Roman of senatorial rank, naturally gained this impression, owing to the great social and political importance of the freedmen of his time in Rome. He tells us in another passage that almost all the families of senatorial rank at that time were descended from freedmen.[9] These were eligible for all offices and actually held them. In contrast with these the great body of German *liti* in the peasant occupations must have appeared very humble. He especially emphasizes the fact that German freedmen were not considered of equal rank with the free.[10] He expressly excepts, however, those states which were ruled by kings.

The economic importance of freeedmen is quite a different proposition. In this connection we must remember the *laeti*, bands of Germans, who, from the end of the third century, were settled by the Roman Emperors on public lands in Gaul. They were given estates, *terrae laeticae*, in return for performing military service.[11] Though they were not free to move, their status was hereditary, they were farily independent, had a co-operative constitution, and seem to have lived according to their native laws.[12] In a *constitutio* of the Emperor Honorius (399)

[1] Sohm, "Die Liberti in altgerman. Zeit." *Zeitschr. d. Savigny-Stiftung f. RG.*, 21, 20 ff. (1900).
[2] Guilhiermoz, *Origines de la Noblesse en France*, 46, note 28.
[3] See Guilhiermoz, op. cit., 41 ff., and Sohm, op. cit., 23, and Guérard, *Polyptyque de l'abbé Irminon*, 1, 267.
[4] See the sources collected by Guilhiermoz, op. cit., 47, note 32.
[5] *Annal.*, i, 57; ii, 45; xii, 30, etc.
[6] *Annal.*, xii, 30.
[7] See Waitz, *VG.*, ii, 1[3], 349, note 4, 357; Brunner, *RG.*, ii, 260, note 9.
[8] *Germania*, c. 25.
[9] See *Annal.*, xiii, 57.
[10] *Germania*, c. 25.
[11] See above, 52 ff.
[12] See Brunner, *RG.*, 1[2], 54.

we have positive proof that these *laeti* soon developed great economic activity and seized more land then they were entitled to. This could have happened only if they were in a favourable social and economic position.[1] It should, moreover, be observed that a Summarium to Theodosianus summed up this *constitutio* as follows : *peregrini occupantes Romanam provinciam nullum beneficium accipiant, nisi eis principalis indulgentia concesserit.*[2] Thus an accretion of land above the normal is here called a *beneficium.* This does not simply mean a favour, but is used in its technical sense, as we see from the verb *merere*, which in Merovingian and early Carolingian terminology is always the technical term used for the acquisition of benefices.[3] In this connection it is noteworthy that in one of the Marculf formularies the expression *beneficia* is used for the land which the king exchanges with a noble. Among its appurtenances *colonicae* are the first to be mentioned.[4] Thus it is clear that semi-free and even unfree men could receive land as a *beneficium.* These received the land on a better right " without such service as was the rule in the transference of land to serfs." [5]

If, then, land was bestowed in return for the performance of certain services, the bestowal lasted as a rule as long as the service itself. Therefore actual permanent possession, and soon even an hereditary right, might develop in consequence of political considerations. It is well known, in connection with the Merovingian grants of land, that the Frankish kings confirmed all the gifts of their predecessors.[6] This applied especially to the royal *leudes.* The old theory that these grants were made chiefly for military purposes can no longer be held ; benefices were far more frequently granted in return for economic services.[7] *Beneficia* may also stand for the rent-paying holdings of peasants ; we find them held by persons liable to base services and even described as coloni.[8] The difference lay in the fact that the beneficial holdings were more independent than the *Hufen*, situated in a closely integrated property complex ; the *beneficia* provided a way out of the latter, since, furthermore, the landlord's power over the land on lease and over the leaseholder was much looser.[9] And since presentations of *beneficium* frequently occurred in Merovingian times,[10] and the great estates also, as we now know,[11] were developed during that period, we must assume that the economic and social changes brought about by these did not appear for the first time in the later Carolingian period. There must have been at the same time an improvement in the economic and social position of beneficiaries.

The same applies also to those *liti* and semi-free men who had not received *beneficia.* It is not true that there was no real improvement in their condition even in Carolingian times. On the contrary, the outbreaks of discontent among these classes, for example in Saxony, might be regarded as proof that the *liti* already played an important part [12] ; indeed, the Emperor Lothar hoped by the help of the *liti* to be able to humiliate the powerful nobles, the league of the Stellinga (*Stellingabund*).[13] I have already proved from the sources that in Carolingian

[1] Quoted by Brunner, op. cit., note 13.
[2] Brunner, op. cit.
[3] See below, Chapter IX.
[4] *Form. Marculf.*, i, 30, *MG. FF.*, 61.
[5] Waitz, *VG.*, ii, 1^3, 305.
[6] Cf. Brunner, *DRG.*, ii, 246, note 16.
[7] Seeliger, *Die Soziale u. politische Bedeutung der Grundherrschaft im früheren Mittelalter*, 34.
[8] Seeliger, op. cit., 40, earlier Waitz, *VG.*, 4^2, 181, and esp. 363. Also my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, 1, 2nd edit., 227 f.
[9] Seeliger, op. cit., 41 ff.
[10] Cf. below, Chapter IX.
[11] See above, 204 f. and 213 f.
[12] See H. Brunner, *RG.*, 1^2, 356.
[13] Cf. Nithard, iv, 2 ; also Waitz, *VG.*, 3^2, 149.

times the economic situation of the semi-free became more favourable.[1] It is known that even in the Merovingian period the Church favoured and recommended manumission as a work pleasing to God.[2] There was already a remarkably large body of freedmen whose interests the church upheld.[3] The problem of these freedmen and their legal position was an important part of the legislative programme of Councils from the sixth century onwards.[4] Even in Merovingian times three serving-folk of both sexes were freed on every royal farm (*villa*) at the birth of a royal prince.[5] That would involve several hundred freedmen at a time. The entry into religious life also afforded an opportunity to many unfree persons to become free.[3] The freedmen were usually provided with land by the territorial lords. But it is a mistake to emphasize only the negative results of this process, namely that the semi-free *censuales* were depressed again.[6] The very complaints from which we learn of this show how vigorously these semi-free classes fought against the tendency to force them back into bondage, frequently even going so far as to flee and to refuse service.[7]

Further, we ought not to overlook the fact that it was decidely to the interest of the territorial lords to make their often thinly populated and not infrequently waste land economically more profitable, by granting land on favourable terms and affording advantageous economic conditions. Manumission increased the personal participation of the tenants in the profits, provided that suitable grants of land were made to them. Hereditary leasehold and *métayage* occurred both in the Merovingian kingdom and among the Visigoths,[8] and the existence of *cerocensuales* in the sixth century has been definitely proved by Gregory of Tours.[9] These freer forms of land-leases must have very much strengthened the class of semi-free. This is clear from their practical results, for at the beginning of the Carolingian period there is a special category of seigneurial *Hufen*, called *hobae lidiles*, which were larger than the *serviles* and carried fewer burdens.[10]

The *liti* disappear later; they have already partly gone in the ninth century, though not as completely as earlier scholars thought. Some of them became fused with the free tenants, but the rest, i.e. the majority, were merged in the *censualitas*.[11] At that time already *liti* and *censuales* were trying to improve their general position by attempting to secure freedom, not from all connection with the great estate in general, but from the local compulsion of the demesne.[12] But above all, the fact that the *liti* could acquire property, and make contracts, made it possible for the more efficient man to purchase his freedom by means of that property.[13] This is proved not only by the *Lex Frisioni*, but by a series of Alemannic documents belonging to the early Carolingian period.[14] *Liti* who possessed no freedom of

[1] *Wirtschaftsentwicklung der Karolingerzeit*, ii, 2nd edit., 36 ff.
[2] Cf. Brunner, *RG.*, 1^2, 359 ff.
[3] Cf. Roth, *Feudalität*, 295 ff., esp. 312.
[4] For further details see Chapter VIII.
[5] Cf. *Form. Marculf.*, i, No. 39.
[6] See v. Inama-Sternegg, *DWG.*, 1^2, 359.
[7] Cf. the *Pactum pro tenore pacis* of Childebert I and Clothar I (511–558), c. 15. *MG.*, Capit. 1, 6.
[8] Germ. edit., ii^2, 171, note 393.
[9] *Hist. Francor.*, x, 9. *MG. SS. rer. Merov.*, 1, 417.
[10] Cf. Guérard, *Polyptyque de l'abbé Irminon*, 1, 584 f.
[11] See my documentary proofs in *Wirtschaftsentwicklung d. Karoling.*, ii, 42, note 1 = 2nd edit., 43, note 1.
[12] *Lex Sal.*, 50.
[13] xi, 2: *MG. LL.*, iii, 60.
[14] *Wirtschaftsentwicklung d. Karolingerzeit*, 2nd edit, 41, notes 4–6.

movement could in this way purchase the right of mobility from their lords. Among the Burgundians it was a regular custom, even in the fifth century, for freedmen to buy for twelve solidi permission to go where they wished.[1] Thus greater mobility was made possible and this gave rise not only to better and easier distribution of employment of labour in the different agricultural centres, but also enabled men to obtain more favourable economic conditions. The *censuales* in particular could, after paying their agreed rent, use the excess of their produce to enrich themselves.

The subject of manumission now leads us to consider the lowest classes of the population, the unfree. The number of these to be found in the pre-Carolingian population has been very variously estimated by scholars.[2] Tacitus, in his time, speaks of unfree persons and indeed distinguishes two classes, those who were originally free but lost their freedom by staking it in play[3]; and the rent-paying tenants of landlords, of the same type as the Roman coloni.[4] Unfree persons existed, therefore, in large numbers from the early German period and were even used for economic purposes outside the lord's house.

During the next period, the so-called migrations, the wars in which Roman sway was abolished and the appropriation of land by the Germans, must also have considerably increased the number of slaves,[5] even if we do not believe in a general enslavement of the free Romans.[6] There is no doubt that even when the new German states were in course of foundation, after the migrations, there were a large number of slaves, not only in the West but in the East also. This is proved by the numerous manumissions which took place in Merovingian times,[7] and by the great increase in the slave trade. This has sometimes been held only to apply to Neustria,[8] but we must not forget that regulations about the sale of slaves occur in various folk laws of the Inner and East German tribes,[9] and that even Tacitus (as we saw just now) tells us that the Germans sold freemen, who had become slaves because they had staked themselves in play.[10] Passages in Paul the Deacon reveal similar occurrences and make it clear that large numbers of slaves, especially captives in war, were sold from Inner Germany to the South.[11] Some folk laws actually forbid the sale of slaves; for example, the Frisian Law forbids them to be sold to *paganas gentes* in order to prevent their being killed as sacrifices by the heathen.[12] But this cannot have been the only reason for these prohibitions. The Alemannic Law forbids the sale of slaves outside the country, whether to heathen or Christian, unless at the command of the Duke.[13] Nor is it true that only Inner Germany carried on a slave trade with the Roman territories, for we learn from the Burgundian Law that slaves were sold by the Franks to Burgundy,[14] and the same may be inferred from the decree of the Council of Châlons (639–654), wherein it is laid down that no Christian may be sold as a slave

[1] *Lex Burgund.*, 57. *MG. LL.*, sect. i, t. ii, 91.
[2] See Germ. edit., ii[3], 173.
[3] *Germania*, c. 24.
[4] Ibid., c. 25.
[5] Also H. Brunner, *RG.*, 1, 231 = 1[2], 368.
[6] See above, 102.
[7] See above, 227 f.
[8] Brunner, *RG.*, 1, 231 = 1[2], 368.
[9] Cf. *Lex Frision.*, xvii, 5; *Lex Aleman.*, 37; *Lex Baiuvar.*, xvi, 6.
[10] *Germania*, c. 24.
[11] *Hist. Lungob.*, i, 1.
[12] Cf. the letter of Pope Gregory III to St. Boniface, c. 732. *MG. Epp.*, iii, 280, No. 28. Also Grimm, *Mythologie*, 39.
[13] Tit. xxxvii, 1.
[14] *Extrav.*, xxi, 9.

outside the kingdom.[1] It should also be noted that the sale of foreign slaves (*servi alieni*) is often mentioned in the folk laws.[2] Clearly a trade in slaves was carried on not only by their masters, but also by professional slave-dealers, among whom the Jews from early times played an important part.[3]

It is now for the first time possible to understand the numerous prohibitions relating to the sale of freemen.[4] In almost all the folk laws there is a decree that such trade should not be allowed either inside or outside the state or the province; the persons sold must be brought back and restored to freedom, and if this could not be done their wergeld must be paid. Presumably many freemen had in this way sunk into slavery, probably increasing the number of slaves outside rather that inside their home-country. It is at once evident that the slave trade was not confined to the markets of Neustria. On the whole, we may assume that the number of manumissions exceeded the number of enslavements,[5] which accounts for the surprising phenomenon that there was not a great increase in serfdom during this whole period.[6]

I have already drawn attention to other circumstances, besides the numerous manumissions, which indicate an improvement and alleviation in the condition of the unfree. Above all, the oft-quoted principle that a marriage between free and unfree deprived their offspring of freedom was no longer of general application. On the contrary, if a free woman married a *servus*, a charter from the lord (*conculcaturia*) might make freedom possible for the offspring of the union. Charters of this kind are found already in the Merovingian period, as, for example, those of Angers and of Marculf.[7] Moreover, it was possible for the children of unfree women to be preserved from slavery by pious dedication to the church (*traditiones*).[8] Finally, many men won their freedom by giving effect to the provision in Roman law for a thirty-year period of qualification, and they also assumed it arbitrarily, as we see from numerous lawsuits in the early Frankish period.[9]

One point deserves especial notice; at the end of the Carolingian period, in which, according to the usual theory, there was a general depression of freemen,[10] we learn from various sources, especially in East Germany, that there was a marked lack of slaves.[11] There must, therefore, have been an improvement in their condition, and they must have begun to rise in the social scale. The development of the great estates, especially among the Germans, had a positively beneficial effect in this direction. Tacitus noticed the great difference between Romans and Germans in their treatment and employment of *servi*.[12] He especially notes that on seigneurial land they were farming on their own account. Waitz remarked that "in Gaul this practice was the cause of a considerable improvement in the position of slaves."[13] And another factor may be noted in this connection. At the beginning of Carolingian times a special group became distinguished among

[1] *MG.*, Concil., I, 210, c. 9.
[2] See Germ. edit, ii², 176, note 424, also *Lex Baiuvar.*, xvi, 1.
[3] Cf. Br. Hahn, *Die wirtschaftl. Tätigkeit der Juden i. fränk. u. Deutsch. Reich* (1911), 23 ff.
[4] *Lex Sal.*, xxxix, 3, 4; *Lex Rib.*, xvi; *Lex Frision.*, Tit. xxi; *Lex Saxon.*, c. 20; *Lex Thuring.*, c. 40; *Pactus Aleman.*, iii, 12; *Lex Aleman.*, xlvi, 1; *Lex Baiuvar.*, xvi, 5.
[5] H. Wopfner, *Hist. Vierteljahrschr.*, 1923, 199, thinks differently.
[6] See my *Wirtschaftsentwicklung d. Karolingerzeit*, ii², 45.
[7] Ibid., ii², 42, note 1.
[8] Ibid., note 4.
[9] Ibid., 2nd edit., 34.
[10] See Germ. edit., ii², 178, note 436.
[11] See my *Wirtschaftsentwicklung d. Karol.-Zeit.*, ii, 42 = 2nd edit., 43.
[12] *Germania*, c. 25.
[13] *VG.*, ii, 2³, 223.

the unfree, *servi beneficiales*, in contrast to the *proprii*. Even in Merovingian times the *servi casati* were legally superior to the ordinary slaves. They were not common *mancipia*, set free per *denarium*, nor slaves without property like the *servus* in *Lex Salica*, 26, but *mansuarii*, who even before manumission possessed land and probably also *mancipia*.[1] Thus some slaves were already able to own property; the land of the *mansuarius*, with its appurtenances according to the Roman model, is described as his *peculium* and he himself as a *servus peculiaris*.[2] Thus they were later able to attain full freedom, to some extent in consequence of manumission, *per denarium ante regem*. With the development of the great estates such appointments of *mancipia* to *Hufen* (*mansi*) must have become more frequent as the estates of one lord became more extensive. In consequence of the scattered nature of the lands, which they had gained piece by piece by numerous single conveyances, it was to the advantage of these landlords to exploit them by the useful method of *servi casati*. A typical example is found in Merovingian times in the decayed estates of the bishopric of Rheims, which were restored and economically improved by planting *coloni* in the various villages.[3]

Moreover, these numerous grants of land to church and king,[4] which are regarded as the chief source of the growth of great estates, brought with them another phenomenon, to which, in my opinion, sufficient importance has not been attached, from the point of view of social history. These grants were often accompanied by the manumission of slaves who were handed over to the protection of the recipient.[5] Thus, entry into the union of a great estate (especially an ecclesiastical one) led to an improvement in their position.

Slaves became tied to the soil, i.e. they could not be transferred without the *Hufe*, nor the *Hufe* without them.[6] It was not in the second half of the eighth century that the *servi casati* were for the first time counted among the *immobilia*, while the rest of the *mancipia* were still considered *mobilia*; this is no innovation as compared with Merovingian times. There are already similar comments in a *constitutio* of the Emperors Valentinian and Gratian in the second half of the fourth century. Again, certain Formularies of Angers reveal the same situation in the seventh century in respect of the *mancipia originaria*.[7] The law is therefore an old one, and not a Carolingian innovation. Moreover, with regard to this development, the Edict of Theodoric had already made certain exceptions, by which the transference of such *mancipia* might also be permitted without the *immobilia*.[8] Nevertheless, even granting that this immobility of *mancipia* is an old law, in existence from the fourth to the seventh centuries, the course of development must have been not from mobility to immobility but vice versa. In this way the meaning of the regulation in the *Edictum Theodorici*, which was intended to supply the lack of labour for urban industries, becomes clear.

This mobilization of unfree agricultural labourers for work in the towns did not involve any change for the worse, but rather an improvement in their

[1] H. Brunner, *Histor. Aufsätze f. G. Waitz*, 68 f. (1886).
[2] Brunner, *DRG.*, 1^2, 370, note 9.
[3] *Vita Nivardi episcopi Remens*, c. 6: *MG. SS. rer. Merov.*, v, 163.
[4] See my *Wirtschaftsentwicklung d. Karolingerzeit*, 1^2, 196, and Haff, *Zeitschr. d. Savigny-Stiftung f. RG.*, xxxiii, 453 ff., esp. 459 ff.
[5] Germ. edit., ii^2, 180, esp. note 447.
[6] Brunner, *DRG.*, i^2, 370.
[7] *Form. Andecav.*, No. 3, *MG. FF.*, 6.
[8] c. 142, *MG. LL.*, v, 166.

circumstances, as has been taken for granted in analysing the later period of the so-called rise of town life in Germany. In the towns these unfree elements of the population found new and certainly more favourable conditions of labour.[1] Such conditions, however, did not arise in urban centres alone; they also appeared within the great estates themselves, with their constantly expanding territory and power. The organization of their great economic activity made it possible to utilize the personal efficiency of each man, in a way that could not be done in smaller concerns. Numerous officials and overseers became necessary[2]—stewards, bailiffs, foresters, huntsmen, falconers, rangers, butlers, managers of studs and of fisheries, and many others; individual ability and special skill could become important in seigneurial trade, or in service as messengers or soldiers. However subordinate the legal position of these unfree house-servants and industrial workers may have been, it was often better than that of the unfree peasant owing dues. Even if they all counted legally as serfs, in practice their economic importance varied greatly with that of their lord and with the nature of their employment.

This differentiation within the large social class of the unfree, which v. Inama-Sternegg regarded as the "specific result" of a later period (tenth to twelfth centuries), was already in existence long before, and was not "introduced" for the first time even in the Carolingian era.[3] With the growth of the great estates and the extension of cultivation to hitherto uncultivated land by means of reclamation and the introduction of special forms of agriculture, for example vine-growing, better conditions of land-tenure appeared. Not only later, but as early as Merovingian times, clearings and vineyards led to the development of free hereditary holdings. In the Formularies of Angers (seventh century) *métayage* or *Teilbau* (*colonia parciaricia*) already occurs in the case of vineyards,[4] and the form of the *precaria* was also used among the settlers (*accolani*) who received land for reclamation.[5] It should also be noted that at least some of the ecclesiastical *coloni* among the Alemanni[6] and Baiuvari[7] were already described as freemen, whereas in the West they were still on the whole considered as unfree.[8] Moreover, from a social point of view, the growth of great estates by no means produced only unfavourable results. In the light of what we have already learned about the old Mark-association we can now interpret the matter correctly. We have seen[9] that there were already Mark-associations on the great seigneurial estates of the late Roman period, and that they continued with these into the early Middle Ages. They were not, as was formerly believed, communities of free peasants possessing the common ownership of the village Mark. Even in their capacity as tenants of seigneurial land they possessed certain rights, which can easily be derived from the economic interests of the great estate itself, i.e. certain rights of inheritance in the absence of direct heirs of a deceased member, and the right of vetoing the settlement of strangers to the village and the Mark. The former was intended to safeguard the undiminished rent for the lord, and both these rights sought

[1] Cf. v. Inama-Sternegg, *Deutsche Wirtschaftsgeschichte*, ii, 205, 237; also below, Chapter X.
[2] Cf. v. Inama-Sternegg, *DWG.*, 1^2, 358.
[3] *DWG.*, ii, 51.
[4] No. 30, *MG. FF.*, 14.
[5] Cf. *Form. Marculfi*, ii, 41; ibid., 100.
[6] *Lex Aleman.*, viii, xxiii; *MG. LL.*, iii, 48, 52; also lvii, ibid., 64.
[7] The proselytes, as Waitz, *VG.*, ii, 1^3, 240, note 3, explained, were also called *coloni*, but on the other hand *liberi*: cf. also *Lex Baiuvar.*, I.B.: *de colonis vel servis ecclesiae*. *MG. LL.*, iii, 278.
[8] See Germ. edit., ii^2, 182, note 462.
[9] See above, 43 ff. and 148 ff.

to maintain the tenant in a position in which he was capable of discharging his obligations in dues and services, and with this purpose in view to protect him against any infringement of his own rights. In the same way the pre-occupation of the lord with the yield of his estate [1] is reflected in the right of reclamation which, already in the Roman period, the lord had conceded to the tenants *pro rata possessionis*.[2]

There is no doubt that all these rights brought about an economic and social improvement in the position of tenants on the great estates, especially as regards the fiscal burden, which had pressed upon them in Roman times and which now gradually disappeared in these German states. It transpires that the small peasants went over in large numbers to the Germans because they enjoyed more favourable conditions there.[3] Given the necessary application and efficiency, they could extend their holdings by bringing waste land under cultivation. The imperial enactments on this point (*Leges Hadrianae*, etc.) should therefore be regarded as measures already taken in the Roman era for the protection of the peasantry. The peasant tenants had also a share in all the advantages of a higher agricultural technique, which was practised on the large estates, and was not available to the free peasant on his own small holding. Among the foremost of such advantages were the provision of farming equipment, such as seed and tools, and a share in productive plant, such as bake-ovens, wine-presses, smithies, and mills. I have already spoken of the advantages enjoyed by the peasants on the great estates, owing to the privileges possessed by their lords.[4] The *immunitas* protected them from the direct encroachments of public officials, who could not enter land thus freed nor exercise force over its inhabitants. Their lord represented them in public courts of justice, he watched over them, and indeed he himself soom came to arrange their military service.

It must not be forgotten that the state obliged the rich, and these great landlords in particular, to look after the poor,[5] and the measure of their responsibility depended on the extent of their estates. Not only did they erect churches and chapels on their land, but also hospitals and shelters for strangers. They alone were in a position to advance ready money at need,[6] to give credit, and in the last resort to bestow annuities upon childless or disabled persons, in order to provide for their old age, in return for their plot of land (*traditio*); in short, they became responsible for a full and embracing socio-political activity, which was greatly to the advantage of the poorer classes of the population, and this at a time when the state was not yet in a position to carry out such duties on its own account. These happy consequences of the growth of great estates did not, however, make themselves felt for the first time in the Carolingian period. Like the estates themselves, these improvements came into existence earlier and derived special stimulus from the representative *par excellence* of large land-ownership, which had been growing up since late Roman times. That representative was the Church, with its charitable functions and aims.[7]

Against the abuse of power, of which the great landowners might be guilty in this pre-Carolingian period, above all against the oppression of the economically weakest and poorest,[8] the combination of the tenants, now so numerous,

[1] See above, 151 f.
[2] See Germ. edit., ii[2], 183, note 465.
[3] See above, 91 ff.
[4] See above, 217 f.
[5] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, ii[2], 274, and Chapter VIII below.
[6] Ibid., i[2], 216 f.
[7] See below, Chapter VIII.
[8] See above, 217 f.

provided the possibility of a stronger resistance. On these great estates and land-complexes seeds were sown for the formation of rights of class and status. Manorial custom, which was gradually evolving, was by no means, as used to be thought, the levelling of a uniform mass of tenants all bound by identical dues, but displays a differentiation of status according to the different legal condition of the various tenant groups.[1] This is not true only of the later period after the tenth century, for if already in pre-Carolingian times the peasant tenants on the large estates differed among themselves both in personal status and in their land titles,[2] it means that the prerequisites for such a process were already there.

Here, therefore, the old social isolation of the small free peasant farmers was more easily overcome, and a consolidation was effected which, in the event of a threat from without or of an infringement of their rights, would act all the more directly if those concerned were numerous and near at hand. As a matter of fact, in the Carolingian period as well as in late Roman times, we find evidence of resistance and of co-operative unions on the part of these tenants on seigneurial estates, of refusals of service and rebellions against their lord.[3] There is no fundamental difference in this matter between developments in the German period and the misery of the late Roman age; even in pre-Carolingian times there was no lack of such peasant rebellions. I need only mention the revolt of the people in the territory of Limoges in 579, when they were oppressed by heavy taxation.[4] Nevertheless, in these German states of the early Middle Ages conditions were better than before for the peasants, chiefly because the small peasant farmer was not handed over to a big leaseholder (*conductor*) against whose caprice the representative of the state (the imperial procurator) gave no protection, as they were so often in collusion owing to their common interests.[5] We have already seen that the early German monarchs among the Ostrogoths and Visigoths, Burgundians and Franks, and the dukes among the Alemanni and Baiuvari, struggled against the great landlords and stood up for the small freemen, and especially protected the peasants against unjust demands from the lords by fixing their economic services.[6]

Furthermore, the Church, even though as a large property-owner itself it had to a great extent the same interests as the lay aristocracy, soon broke down the hitherto solid might of the great estates. For its possessions were quite often threatened by the secular nobility or, rather, by the officials of the state, and especially the counts. It tried to protect itself against their encroachments by obtaining grants of immunity, and it came to the aid of the poor and weak.[7] It is no accident that the folk laws undertook above all the regulation of the dues of tenants on Church lands, and seem to have laid down maximum scales which could not be exceeded. The regulations of the Alemannic Law [8] on this point immediately follow those which are directed against the expropriation of ecclesiastical property by the laity.[9] Those of the Bavarian Law [10] end with the significant prohibition: *tamen iniuste neminem obpremas.* [11] Here we have protective legislature,

[1] See G. Seeliger, *Die soziale u. polit. Bedeutung der Grundherrschaft im früheren MA.*, 179.
[2] Cf. Garsonnet, *Histoire des locations perpétuelles et des baux à longue durée*, 1879, and Pivano, *I contratti igrari in Italia nel alto medio evo* (1906). See above, 230 f., and 233 f.
[3] See the proofs in my *Wirtschaftsentwicklung der Karolingerzeit*, ii², 30 ff.
[4] Gregory of Tours, *Hist. Francor.*, v, 28.
[5] See above, 136.
[6] See above, 217 ff.
[7] See below, Chapter VIII.
[8] Tit. xxii and xxiii. *MG. LL.*, iii, 51.
[9] Tit. xix, op. cit.
[10] Tit. i, 13, op. cit., 278 f.
[11] Ibid., 380; cf. also ibid., 279, with reference to *angariae*: *amplius non minentur.*

especially on behalf of the unfree, which was bound to bring about an improvement in their position.

A similar process may be traced in England. According to the *Rectitudines*,[1] the peasants were to do "what they had been told to do," and this cannot be interpreted [2] in the light of a series of labour services left to the caprice of the lord, for the same formula is also found in those laws which were definitely intended to protect the peasant, and which even, like the Bavarian Law, aim at fixing these services to their advantage.[3]

In my view the conditions of the time are to be explained quite differently. Again and again the traditional custom is taken as the norm and standard for these services. No new burden, no increased demand above what had been hitherto the custom was to be allowed.[4] It is certainly significant that the word *consuetudo* was already being used as the technical term for tribute and taxes.[5] In England, the *Rectitudines*, at the end of the paragraph about peasant services, emphasizes the maintenance of the old system of property in land and popular custom.[6]

Thus the peasants had a means of protection if a new or unusual increase of their burdens were imposed on them. This is shown clearly by numerous specific examples which can be found in Merovingian times. Thus it is said that King Dagobert laid "unaccustomed tribute" (*insueto censu*) on the people of Bourges, and that the latter complained to their bishop.[7] We also learn that the popular revolt of the people of Limoges in 579 was caused by *discriptiones novas et gravis* introduced by King Chilperic.[8] At the Council of Clermont (535) the bishops told King Theudebert that he should content himself with the "customary" taxation, and that each man should pay only the *debita tributa*.[9] This also left a trace in the formulary of the immunity-charters of the eighth century, in which the demands which are prohibited seem also to include *novae consuetudines*.[10]

The consolidation of these men who were bound to service is reflected in the general term expressing their obligation; they are called *consuetudinarii* among the Franks in the early Carolingian period [11] and in England in the eleventh century.[12] The land itself, in respect of which the holders, even freemen, are according to custom to perform services, is called *terra consuetudinaria*.[13] Thus the concepts involved are those of men subject to dues, and of land bearing dues, and their meaning is not confined to the unfree and the semi-free.

The class of *colliberti* illustrates this process of development most significantly.[14]

[1] In the so-called *Rectitudines Singularum Personarum* (960–1060), c. 4. Liebermann, *Gesetze der Angelsachsen*, i, 444 ff.

[2] See Germ. edit., ii[2], 187 ff.

[3] *Lex Baiuvar.*, i, 13: "tantum serviant, quantum eis per possibilitatem impositum fuerit." *MG. LL.*, iii, 280.

[4] See the passages quoted by Waitz, *VG.*, ii, 1[3], 209, note 1; 227, note 2; ii, 2[3], 263, note 1 Also Gregory of Tours, *Hist. Franc.*, v, 27, vii, 52.

[5] See Germ. edit., ii[2], 189, note 490.

[6] Op. cit., 448, c. 4, 6.

[7] *Vita Sulpicii ep. Bituric. MG. SS. rer. Merov.*, iv, 376.

[8] Gregory of Tours, *Hist. Franc.*, v, 28.

[9] *MG.*, Concil., i, 71.

[10] So at least for Italian recipients. *MG. DD. Karol.*, 156–8.

[11] Cf. King Lewis the Pious' charter to St. Columba (Sens) in A.D. 833. Bouquet, *Recueil*, vi, 591. Mühlbacher, *Regesta Imperii*, i[2], No. 525, confirming earlier documents.

[12] Cf. Vinogradoff, *English Society in the Eleventh Century*, 284.

[13] Cf. the *Form. Extravag.*, No. 27, *MG. FF.*, 725.

[14] Germ. edit., ii[2], 190.

Until recently very little was known about them. A certain passage in the sources, the point of which has long been recognized, indicates that not only birth but also *traditio*—the grant of land—gives rise to a class of *colliberti*. Recent Italian scholars have finally cleared up the whole matter,[1] by showing that this term expressed the social equality of freedmen, who had been emancipated by the same lord. *Colliberti* are not a phenomenon peculiar to Lombard law, nor are they to be found only in France, but also in England, where they are called boors, and in Bavaria.[2] In the latter the term denotes members of a free social class.

N. Tamassia demonstrated the existence here of a connection with Roman conditions, and based his explanation also for Bavaria [3] on the well-known survival of the remnants of Roman population. Thus we have before us a combination of men, originating in the erstwhile slavery of the freedmen,[4] and this also explains the common rights which we find later in the relations of these *colliberti* with each other. These rights are very like those of the Mark-associates, for they include a prior claim of neighbours to land in the case of its alienation as well as certain rights of inheritance over it, and finally common rights over the undivided land of the village (*fiuvaida*).[5] Indeed a Lombard charter of 730, which deals with this has been regarded as important evidence for the existence of the Mark-association.[6] These *colliberti* are also called *comministri*, with reference to the service which they owed their common lord.[7] The importance of freedmen in the growth of a class of *ministeriales*, which we dealt with above in general terms,[8] is here further explained. For in France at a later date officials were chosen from among the *colliberti*, and in some circumstances they entered the knightly class. Within the great estate it was not only the unfree who were given *Hufen* (*mansuarii*) which enabled them to improve their position and therefore to rise in the social scale, but also the unfree who worked in the lord's house. Here a word may be said about the *pueri* and *gasindi*. I have already remarked that I do not regard these simply as a strictly uniform class of slaves; some of them were certainly freedmen.[9] It is especially noteworthy that these terms appear to be used not merely for the unfree servants of the king, but generally, in the sense of *famuli* or *ministri*.[10]

As now in the king's household some, though not all, of the unfree servants were put on an equal footing with the freedmen (*liti*), so also in the case of the other great estates an improvement in the social position of the unfree might be brought about by manumission, especially as similar opportunities for administrative employment were available, owing to the growth of the great estate. It is generally assumed that the administrative system of ecclesiastical and secular properties was copied from that of the crown lands.[11] We have already seen that some of the *pueri regis* who were *liti* rose to the positions of count and *sakebaro*.[12]

[1] Salvioli, "Consortes e colliberti secondo il diritto longobardo-franco," *Atti e memor. d. R. deputazioni di Storia Patria per le prov. Modenes. e. Parmesi*, 3, ser. 2 (1883); Tamassia, "I colliberti nella Storia del diritto Italiano," in *Studi di diritto Romano etc. in onore di Scialoja*, ii, 147 ff. (1905).

[2] Cf. *Lex Baiuvar.*, ix, 4; *MG. LL.*, iii, 303.

[3] Tamassia, op. cit., 165.

[4] It is pointless to assume that they were unfree, as did Lamprecht and E. Mayer.

[5] Tamassia, op. cit., 162.

[6] See my *Wirtschaftsentwicklung der Karolingerzeit*, 1^2, 369 f.

[7] Tamassia, op. cit., 156.

[8] See above, 228 f.

[9] See above, 227.

[10] Cf. *Vita Eligii ep. Noviomag.*, ii, 25; *MG. SS. rer. Merov.*, iv, 714 (of a bishop); Gregory of Tours, vii, 46; ibid., 1, 322 (of a trader).

[11] See v. Inama-Sternegg, *WG.*, 1^2, 464, 481.

[12] See above, 227.

But even completely unfree persons were raised in Merovingian times to the office of count and to other offices. In the sixth century a striking example of this is to be found in the history of Leudastes, a man of unfree origin who rose in the king's service till he became count and even *dux*.[1] This seems to have happened very frequently in Spain. The thirteenth Council of Toledo (683) promulgated this œcumenical decree : *ut exceptis servis fiscalibus vel libertis abrasa deinceps huius malae praesumptionis licentia nullus ex servitute quorumlibet, servus sit vel libertus, ad palatina officia transeat.*[2]

The same is true of the Church, as we see from Guérard's collection of passages from the sources concerning the different offices on the great estates.[3] Pöschl has also shown, in his work on the origin of episcopal vassalage,[4] that from Merovingian times bishops and abbots often took the field at the head of armed troops, and that their vassals were called upon not only for military purposes but for other services of the most varied nature. Even under Charles the Great there were unfree episcopal vassals, but among the episcopal servants the knightly Vassi came into prominence quite early. An improvement in social position must have occurred here also. Vassalage without *beneficium* disappeared by a process of restratification, as it did among the lay *seniorates*. Even under Charles the Great an increasing number of episcopal servants were in possession of *beneficia*.[5]

In both cases there were similar economic and social conditions and similar interests to be safeguarded, both in the administration of the large estates and in military matters, and the political position gained by these immunity-lordships in the Merovingian period, during the great wars and turmoils in the Frankish kingdoms, had to be protected.[6]

In future it will be impossible simply to point to the depression of the common freemen as the one characteristic phenomenon of the social development of those times. The virile upward movement of the lower classes, and particularly of the unfree, which is everywhere apparent, was a far more influential factor in the remarkable increase of the semi-free population. Only on this assumption is it possible to understand why, in spite of that depression, which was not of later origin, there were still a large number of common freemen at the beginning of the Carolingian period. The fact that these favourable social tendencies were active at that time constitutes a significant progress as compared with the late Roman period. This advance is due to the new factors of growth, above all to the German peoples and to the Church, by means of which the elements of both economic and political life were reorganized. The second of these factors must now be considered.

[1] Gregory of Tours, *Hist. Franc.*, v, 48, relates his career in detail.
[2] *MG. LL.*, sect. i, 1, 478.
[3] *Polyptyque de l'abbé Irminon*, 1, 431 ff., esp. 434 ff.
[4] *Bischofsgut u. Mensa Episcopalis*, 1, 114 ff., esp. 146 ff. (1908).
[5] Pöschl, op. cit., 150 f.
[6] See above, 198 ff.

Chapter VIII

THE CHURCH

FOR a long time past and for good reason Christianity, and its representative, the Church, have been credited with an important part in the reconstruction of European culture. The Church appears in the first place as intermediary between ancient civilization and the new Germanic states. Recent scholarship has, however, revealed a picture somewhat different in its essentials from the one presented formerly. At one time the foreground was overshadowed by the great work of conversion accomplished in the new Germanic states, the basis of the political power of Catholicism and the Roman Church. With the growing conviction of the existence of a great cultural chasm between "Antiquity" and the "Middle Ages", and the conception of the latter as a fundamentally new creation, the Church acquired a vital importance as mediator between the old and destroyed past and the new, primitive present. Such hypotheses naturally caused social historians to pay little attention to the earliest period of the diffusion of Christianity, occurring as it did during the decay of antiquity and before the foundation of the Germanic states.

Recent detailed research into the beginnings of Christianity in the various West and Mid-European lands has made it possible to form a more accurate judgment on this question. With the increasing realization that the transition from late Roman to early medieval development was accomplished without the catastrophe formerly imagined, the meaning and the essence of that primitive Christianity has been better understood.

We know to-day that as early as the end of the second century there were Christian communities not only in Southern Gaul (Lyons) but also in the Rhine and Moselle districts.[1] As Christianity had come to Southern Gaul from the East, so it spread quickly from thence along the Rhine to Northern Gaul, thanks to the active movement of trade within the Roman Empire. Its propagation was due not so much to the army as to the traders, craftsmen, and labourers, who came to Gaul from Italy. Even in Roman times Christians were to be found not only in the towns, the centres of trade, but also in the country, though on the whole heathendom lasted longer among the *pagani* than in the towns. This has been definitely proved by discoveries of early Christian remains in various places—in the Saalburg, in the Taunus, in Wiesbaden, Kreuznach, Bingen, Neuss, Bonn, and Badenweiler.[2]

The manner in which the Germans became permanently settled in these districts long before the collapse of the West Roman Empire (476),[3] brought them at once into close contact with these Christians, and makes it clear that the

[1] See a summary of the results of recent research by A. Hauck, *Kirchengeschichte Deutschlands*, 1⁴, 6 ff., and R. H. Schäfer, *Annal. d. Hist. Ver. f. d. Nied.-Rhein*, xcviii, 47 ff. (1916).

[2] Cf. Hauck, op. cit., and esp. Jos. Sauer, "Die Anfänge des Christentums und der Kirche in Baden," *Neujahrsbll. d. bad. Histor. Kommission*, new series, xiv, 10 (1911).

[3] See above, 52 ff.

ecclesiastical organization of Roman times was not destroyed here. In this connection the following factor must have been particularly effective. It is well-known that at that time, before Constantine's Edict of Milan (313), the adherents of Christianity were chiefly found among the lower classes. Since the Germans of that early period one and all first entered the Roman world as dependents and servants, whether *coloni* and *laeti*, or house-servants and labourers, this social equivalence must have played an extraordinarily important part in promoting and encouraging their intercourse with the Christians. Too little attention seems to have been paid to this fact, which really throws an important light on the spread of Christianity. For not only in the West, but in Pannonia, on the Danube, and the Save, the same process was taking place, as is clearly indicated in one of the earliest sources of the transition period, the *Passio Sanctorum quattuor Coronatorum*, which describes conditions among the labouring population in the quarries of Sirmium even before the Edict of Milan and during the persecutions.[1]

It is absolutely wrong to think that Christianity entered only from the West (Gaul) and the south (Italy). In that early period a strong influence was also exerted over the Germans from the East. The East Germanic tribes, especially the Goths, received Christianity from the East and brought it westwards with them in their migrations.[2] An example of this influence in early Germanic civilization may be seen to-day in the German vocabulary. The word *Kirche* obviously comes from the East, and so also do *Pfaffe*, *Samstag*, and *Pfinztag*.[3] The word *Bischof* may have come direct from the Greek ἐπίσκοπος[4] without passing through Latin. It has already been suggested that the Burgundians had adopted Christianity before their settlement on the Middle Rhine, and had perhaps even brought it from the East with them.[5]

In this connection the discoveries made in various long barrows in the fourth and fifth centuries in Alemannic territory are noteworthy. The spoons, often found with the monogram of Christ, which were used for the Eucharist in the East, but were not allowed by the Roman Church, are especially characteristic of this influence. A strong Hellenistic influence may also be traced in the glass-industry of the Lower Rhine (Cologne) where the early Christian products go back to the fourth century. As early as the second century glass-workers came from the Hellenistic East to the Rhine, and a similar influx occurred again in the middle of the following century.[6]

It has also been thought that Oriental influences were at work in the monumental art of the early Frankish period, because, as the Church spread in Gaul from the Hellenistic cities, Gallo-Frankish art also took its inspiration and its models from the same source. This point of view has been especially emphasized by Strzygowski in dealing with the cathedral of Aix.[7] Apart altogether from this,

[1] J. Jung, *Römer u. Romanen i. d. Donauländern*, p. 148 ff., 2nd edit., 154 ff.

[2] Cf. the article "Bekehrungsgeschichte," by H. v. Schubert in Hoops' *Reallexikon der german. Altertumskunde*, 1, 218 ff. (1911–13).

[3] Cf. F. Kluge, *Gotische Lehnworte im Althochdeutschen*; W. Braunes, *Beitr. z. Gesch. d. deutschen Sprache*, xxxv, 124 ff. (1909), and the article "Kirche" in the *Etymolog. Wörterb. d. deutschen Sprache*, 9th edit., 239 f. (1921).

[4] F. Kluge, *Wörterb.*, 51; and H. v. Schubert, "Die Anfänge d. Christentums bei den Burgunden," *Sitz.-Ber. d. Heidelberger Akad.*, 1911.

[5] Cf. H. v. Schubert, op. cit. iii, esp. 32.

[6] Cf. Joh. Ficker, "Altchristl. Denkmäler u. Anfänge des Christentums im Rheingebiet," *Strassburger Univ.-Schr.*, 1909, 22.

[7] *Der Dom von Aachen und seine Entstellung*, 1904. See also Germ. edit., ii, 198 ff.

Merovingian-Frankish art shows strong traces of Oriental influence, especially in the mosaics of la Daurade of Toulouse and of the Church of Thiers, founded in 575 by the Bishop of Clermont. It is also seen in the late Roman sarcophagi, which first appear in and round Toulouse, and then continue in Bordeaux and Poitiers. These belong chiefly to the sixth and seventh centuries.[1] The Oriental element in Western art undoubtedly exists from the fifth to eighth centuries, even though it must not be overestimated or thought to be the only influence at work.[2] The illuminated manuscripts of the Bible derived their form and decoration from the Orient.[3] In the Gospel MSS. the Canones Tables were first worked out in Syria, and the adoption of this system suggested the framework and general plan of the MSS., which were made in Italy, Gaul, Spain, and Britain. Several motives of Oriental origin occur in the ornamentation. Similarly, in various Rhenish wall-paintings there are ornamental or decorative elements of Oriental origin, such as iconographic forms and typical scenes. They appeared in Western art even before the Frankish era.[4] Recent research into the Carolingian miniatures has revealed the presence of a Greek name in the Vienna *Schatzkammer-Evangeliar*, a direct proof that the sources of the ornaments introduced into Carolingian art from the Vienna MS. are to be found in the East.[5] This is in accord with the literary evidence as to the importance of the Syrians in the Frankish kingdom.[6] It is noteworthy that Gregory of Tours employed a Syrian to interpret to his countrymen the Syrian legend of the seven sleepers; and Charlemagne employed Syrians and Greeks in his attempt to revise the Gospel texts.[7]

As in the West, on the Rhine and in Baden, so also in Bavaria, Christianity made its way even in Roman times. Recent scholars have unanimously arrived at the conclusion[8] that these earliest Christian communities had a continuous existence, outlasting the fall of the West Roman Empire.

The German conquerors did not destroy the ecclesiastical organization which they found in existence. The administration of the Church, its ritual forms, and its religious and moral teachings all remained unchanged, and were taken over by the Germans from the sinking Roman world.[9] The continuity of settlement, which has been traced in detail above, gives concrete proof of this,[10] and shows us the basis on which Christianity arose.

The chronological order of the earliest Christian communities affords interesting evidence of their origin and of the conditions necessary for their development. Besides communities in Egypt and Lybia, Italy and Spain, others appear first in Trier and Cologne, i.e. in the principal cities of the Germanic provinces of the old Roman Empire. From the time of Diocletian, Trier was the chief city of Gaul,[11] and there was a Christian settlement there even in the second century.

[1] P. Clemen, *D. Roman. Monumentalmalerei in d. Rheinlanden* (1916), 685.
[2] Numerous smaller finds from the East are described in Achelis, H., *Denkmäler altchristl. Kunst i. d. Rheinlanden*, in *Bonn. Jhb.*, cxxvi, 59 ff. (1921).
[3] Clemen, op. cit., 686.
[4] Ibid., 687.
[5] See Wilh. Köhler, in 1. *Bericht über die Arbeiten an den Denkmälern deutscher Kunst* (*Deutscher Verein f. Kunstwiss.*), 1911, 80.
[6] P. Scheffer-Boichorst, "Zur Gesch. d. Syrer im Abendlande." *Mitteil. d. Instit.*, vi, 521 ff.
[7] Op. cit., 549.
[8] See the detailed proofs given by Franziss, "Die ältesten Denkmäler des Christentums in Bayern," *Histor. polit. Bll. f. d. kathol. Deutschland*, cxxviii, 313 ff. (1901).
[9] Hauck, op. cit., 1^3, $4 = 1^4$, 4. Also H. v. Schubert, Joh. Ficker, and Franziss, op. cit.
[10] See above, 54 ff. and Germ. edit. ii^2, 201, esp. note 29.
[11] C. Kentenich, *Gesch. d. Stadt Trier* (1915).

Cologne and Tongern come next, as befits their importance in the late Roman period. In these populous towns and trading centres of the Lower Rhine there were Christian communities at the beginning of the fourth century. Mainz on the Middle Rhine, the seat of the Roman governor and the chief garrison city, certainly had a church in the middle of the fourth century, which was frequented by a large number of its inhabitants.[1] In Worms, Speier, and Strassburg, too, Christianity dates back to the fourth century.

We see clearly how it spread—on a Roman basis and from a Roman origin. Several scholars have remarked that the new doctrines spread along the old Roman roads.[2] This is obvious. The country districts were more backward; but here, too, although the beginnings are more obscure, the general development may be traced. In measure as the land came to be exploited first in the neighbourhood of the Roman towns and forts, Christianity appeared.[3] Country churches were founded in various ways, above all by the bishops whose sees were in the towns (*civitates*). It was quite natural that they should erect oratories and small churches on the estates given to them by the pious. This happened even in the fourth century[4]; and especially in the villages (*vici*) with a fairly large population.

At the same time chapels and churches were also being built on the estates of the great territorial lords (*villae*). The lay nobles, the lords of senatorial rank, were the first to adopt this plan; but they were not the only ones. The people themselves also built churches as early as the Roman period; traders and craftsmen contributed their share, and it was not the free population of the villages alone who led the way; the unfree or semi-free peasants (*vicani*) on the great Roman estates played their part also. We have some of their votive tablets and inscriptions and on them thre are special references to a *fundus*; these have been explained by epigraphists as denoting seigneurial organizations.[5] This is important because these organizations lasted into the Germanic period, and it means that the old Gallo-Roman population must have introduced these ecclesiastical institutions among the Germanic peoples who had settled in their midst. Owing to the frequent use of the Germanic population in the colonization of Gallo-Roman territory[6] there were constant opportunities for contact, and therefore for religious influences.

This intercourse explains the well-known fact that Christianity and Paganism were merged in one another in the transition period, a phenomenon especially noticeable in the country.[7] It was not simply due to the faithful adherence of the old Celtic population to paganism. In the very places where this phenomenon has been shown to have existed at the beginning of the fifth century, round Tours, Chartres, and Autun,[8] Germans had been settled for a long time.[9] And the paganism which existed in Northern France and in Flanders when the Franks arrived[10] must have been due to a considerable extent to the Saxons.[11]

[1] Hauck, op. cit., 35 = 1⁴, 35 f.
[2] See the bibliography given above, p. 63.
[3] Cf. above, 52.
[4] Imbart de la Tour, in *Revue Histor*, lx, 2, 259 ff. Also E. Lesne, *Hist. de la propriété écclés. en France* (1910), 60 ff., and H. v. Schubert, *Gesch. d. christl. Kirche i FMA.* (1921), 42 ff., 154 ff.
[5] See the proofs quoted above, 341 ff.
[6] See above, 52 ff.
[7] Cf. Hauck, op. cit., 1², 37 = 1⁴, 38.
[8] Op. cit., 37 f.
[9] See above 52.
[10] Roth, *Gesch. d. Beneficialwesens*, 65 f.
[11] See above, 102.

A further cause contributing to the foundation of country churches and parishes was thought to be the activity of monks in distant desert places (*loca deserta*), beginning in the second half of the fifth century.[1] But the positive importance of monasticism in the economic evolution of the country in that early period was probably very small.[2] Monasticism in those days was without rule, and there were few monasteries. As a matter of fact, monastic life in early times was chiefly solitary[3]; seclusion and asceticism were its most important features. These monks withdrew into quiet deserted places; their main wish was to find the most favourable opportunity for quiet contemplation and self-abnegation. Therefore, from their very nature, they were opposed to the tendency to found new human dwelling-places and to open up waste land to general colonization. The behaviour of Severinus in Noricum is typical. His biography clearly shows the struggle between his task of preaching the word of God to his neighbours and of helping them in those turbulent times, and his own inclination to dedicate himself to God in solitude. His later editor, Eugippius, manages to solve this difficulty very simply by allowing Severinus' monastic inclinations and his desire for solitude to be overcome by divine revelation and command.[4]

It is noteworthy that even where real monasteries were founded, for example at Marmoutiers near Tours by St. Martin, where a large number of monks (eighty are mentioned) lived together, renunciation of all wordly things, including every kind of property, was required. Hand in hand with this we find already the eremitic principle of seclusion from the outside world. We are told of these monks that they seldom went outside the monastery walls.[5] It was neither their duty nor their intention to populate these quiet districts by effecting economic improvements, for this would have prejudiced their own interests.

But from the time of Constantine there was an important change. A hitherto persecuted religion was now legally recognized by the Edict of Milan (313); and soon afterwards it received a definite organization at the Council of Nicæa (325). Both from an economic and a social point of view it was of the highest importance that Constantine also gave it the right to hold property (321).[6] Although the Church had belonged to the *collegia illicita*, it had even before this possessed *immobilia*, as a result of voluntary gifts.[7] But now, not only was the property taken from it during the persecutions restored, but every one was permitted by Imperial law to bequeath to the Catholic Church whatever he desired and to whatever extent.[8] This gave the Church a "passive" testamentary right, the right to receive bequests. It must also be remembered that Constantine in two laws of the years 316 and 321 confirmed the manumission of slaves, if this took place in Christian churches before the bishop.[9] Other Imperial decrees in favour of slaves improved their lot very considerably, as for example the regulation that where *immobilia* were divided, the families of slaves appertaining thereto should

[1] See Imbart de la Tour, op. cit., 261.
[2] Cf. the examples in E. Lesne, *Hist. de la propriété écclés. en France* (1910), 82 f.
[3] Cf. O. Zöckler, *Askese u. Mönchtum*, 2nd edit., ii, 323 ff. (1897).
[4] C. IV.
[5] Cf. Zöckler, op. cit., 2, note 334,
[6] Cf. J. B. Braun, *Das kirchl. Vermögen v. d. ältesten Zeit bis auf Justinian I* (1860), 16 ff.
[7] Cf. Carassai, "La politica religiosa di Constantino il Gr. e la proprietà della Chiesa," *Arch. della R. Società Roman. di Storia Patria*, xxiv, 96, note 1.
[8] Carassai, op. cit., 136, note 2, and Grashof, "Die Gesetzgebung d. röm. Kaiser über d. Kirchengut," *Arch. f. kathol. Kirchenrecht*, xxxvi, 12 (1876).
[9] Carassai, op. cit., 120, note 2.

not be separated.[1] Laws concerning public benevolence in times of great need intensified the social activity of the Church.[2]

At the same time as these important innovations, the government and administration of the Church was being organized. It is no mere chance that in Germany from the fourth century onward the names of the Christian communities and of their bishops emerge.[3] The administration of ecclesiastical property was in the hands of the bishop. It was, however, of great importance that according to Roman precedent[4] Church property was more and more recognized to be inalienable, because it was considered as God's property. It was institutional property, independent of personal ownership and administration and therefore not to be interfered with. The beginnings of this development are seen even in Constantine's time. In consequence of numerous abuses which had been detrimental to Church property, the Council of Gangra (330), and still more emphatically the Synod of Antioch (341), laid down the principle that ecclesiastical property should be administered by one controlling body[5], and from the beginning of the fifth century (401) the alienation of such property was more and more strictly forbidden. At the end of that century (470) the East Roman Emperors prohibited it by law.[6]

The extent of Church property had been remarkably increased during the fourth century,[7] when it was not only tolerated and recognized, but even strongly encouraged by the Emperors. It became the custom for childless people to make the Church their heir, and in other cases to leave to it part of their property for the salvation of their souls.

From the time of Constantine's sons the suppression of heathen ritual began, and from time to time the property of heathen temples was seized. Christian piety soon became exploited by the clergy, who took advantage in particular of the weakness of women to induce them to leave bequests to the Church, to the detriment of their families. In the year 370 Valentinian I expressly forbade clergy and monks to visit the houses of widows and orphans; and he cancelled all gifts and bequests of widows and other women, with whom the clergy had associated under the pretext of religion. Not long afterwards Theodosius the Great opposed the gifts of deaconesses to the Church or to the clergy, in order to prevent the impoverishment of whole families. Under this Emperor, heathen services were forbidden in private houses, public services having already been stopped. Catholic Christianity gradually became the prevalent religion; as early as the beginning of the fifth century it was the necessary qualification for Roman state offices. Side by side with this development we find the growing tendency for the property of heathen temples to be handed over to the Catholic Church, the temples being then turned into Christian Churches. This had not merely legal consequences in respect of their property but other practical results. The country population which, as we have seen, clung to paganism longer than the towns, was brought into closer contact with the new creed and was won over to it, as the old places of worship were gradually changed into Christian Churches.

[1] Carassai, Ibid., 131, note 4.
[2] Ibid., 139.
[3] Hauck, op. cit., 1^2, 26 = 1^4, 27.
[4] Cf. E. Loening, *Gesch. d. deutschen Kirchenrechts*, 1, 216.
[5] Ibid., 234 f.
[6] Grashof, op. cit., 204 ff.
[7] Cf. also E. Lesne, *Hist. de la propriété écclés. en France* (1910), 7 ff.

Clergy who had no relatives used to leave their goods to the Church; and if they did not do it voluntarily, they were soon forced to do so. For this purpose the Council of Antioch (371) gave bishops and clergy an unrestricted right to dispose of their property.[1] It is clear that from the beginning the interests of the new religious community lay in a reorganization of the laws of inheritance, and especially in a loosening of the old legal family ties. Here the aim of the Church was in the direction of individualism, making the individual independent of his kinsmen.

This process led from the earliest times to another economic tendency. The Church could not farm entirely unaided the great estates which came to it from all sides, more especially as these gifts of land were frequently small in themselves, and often widely scattered. A considerable amount of land was therefore farmed by others; and we have here a natural basis for the development of forms of economic organization, i.e. of great estates. In this way the Church was early ranked among the great territorial lordships, and its interests were soon actively linked with theirs. It adopted the various types of tenure developed in the late Roman period,[2] leasehold (*zeitpacht*), hereditary leasehold, and *métayage*, and had numerous opportunities of putting them into operation.

At the same time the special duties incumbent on the Church, and the ethical aims of its religious teaching, led in a new direction. Among the lower classes of the population in particular, Christianity appeared as a religion of the weary and heavy-laden.[3] Originally, it had, to some extent at least, a socialistic, if not a communistic, character. The long persecution of its adherents drove them into the closest association with each other. They were united not only by a common creed, but by a creed which itself insisted on the equality of all. The idea of equality before God, which was taken over from the Stoics and formed the foundation for mutual brotherly assistance, fostered all kinds of association.

It is true, however, that after the Church was recognized by the state there were important changes in this respect. The growth of an ecclesiastical constitution allowed the seigneurial principle to develop, while the appearance of socially superior classes drove the old communistic tendency into the background. A social differentiation made itself felt, and so it came about that these two great principles of lordship and of association were united in the Church. The latter was subordinated to the former; but it continued to exist within the seigneurial system, upon which it had an active influence. The Church aimed at the social amelioration of the lower classes, especially at the manumission of slaves and the improvement of their social position. We have seen that under Constantine it procured the recognition of manumissions which took place before the bishop. This development distinguishes the territorial lordship of the Christian Church from that of pagan Rome. Thus the very essence of the new teaching contained germs from which important new forms were certain to arise. The socialistic ideal of association was neither attacked nor suppressed by the seigneurial principle, but on the contrary was assisted by it, and made to serve its interests as an integral part of the organization of the great seigneurial estate.

A development emerged which led away from the old Roman systems. It must certainly have seemed doubtful whether this tendency could be maintained

[1] Loening, op. cit., 1, 227.
[2] See above, 137 ff.
[3] Cf. also Troeltsch, "Die Soziallehren d. christl. Kirchen." *Ges. Schriften*, 1, 25 ff. (1923).

permanently, and whether the great change which took place when Christianity became the state religion would not in the end lead to the victory of the principle of territorial lordship. No doubt, as we saw, the latter strongly influenced the early communistic tendency and drove it into the background. But the process which was going on in the Church received fresh support from the victory of the Germanic peoples over the Roman world. From the earliest times the position of Germanic slaves differed from that of slaves in the Roman world, a fact observed by Tacitus.[1] They were economically more independent, each having his separate plot of land, and they were more humanely treated by their masters.[2] When the Germans occupied Roman territory and accepted Christianity, the tendencies in the Church which we have been describing must have found a new support from them. This is the explanation why in Southern Gaul, in Spain, and even in Italy the smaller folk fled from the unendurable burdens of Roman territorial lordship to go to the barbarians where their freedom was assured.[3]

Thus on the soil of the Roman great estate, which had lost its economic and social vitality (as the Bagauda revolts bear witness), a continuity of development was made possible by the co-operation of two new forces of civilization, the Church and the Germanic people, basing their work on foundations which had, in part at least, been already laid. In the so-called Middle Ages this process developed into the characteristic form of corporative associations and of freemen on the very soil of the great seigneurial estate itself.

It is true that this corporative ideal was not newly introduced by the Germans, nor was it peculiar to them. The new growth is more complicated than that, nor are its foundations exclusively Germanic. The Germans took over Roman systems, which had been disintegrated by Christianity and needed reorganization. They did not create after the Roman model; what they adopted had partly lost its Roman character and was in a state of change.

A characteristic symptom of economic and social disintegration in the declining Roman Empire was the large-scale pauperization of whole classes of the population, partly brought about by the oppression of the great landlords, and increased by the long wars of the folk-migrations. This gave rise to a remarkable increase in the proletariat. In Roman times the provision for these people was an important duty, not only of the state, but of the rich and propertied classes. After the collapse of Roman rule, not only was there no protection against the unrestricted power of the great capitalistic seigneurial estates, but the sources from which support might have been given to the poor were dried up. This was to the advantage of the Church. Constantine had already recognized its important function in this respect when he handed over to it a part of the deliveries of corn. How adroitly the Church made use of its favourable position we learn from its great opponent in the fourth century, the Emperor Julian, who saw in its charitable activities one of the main reasons for the spread of the creed which he hated.[4]

After its recognition by the state, the Church was able to increase this work and to organize it openly. In the towns, where the first Christian communities were found, provision was systematically made for the poor by the erection of

[1] See above, 44.
[2] Tacitus, *Germania*, c. 25.
[3] See above, 91 f.
[4] G. Uhlhorn, *Die christliche Liebestätigkeit in der alten Kirche*, 1, 213 ff. (1882).

almshouses (*diakonien*),[1] and the needy were registered and were then called *matricularii*.[2] Such arrangements were instituted by Cunibert, Bishop of Cologne (623–663), in Cologne, Bonn, Neuss, Jülich, Kempen, Soest, etc.[3] The Church not only regarded it as the bishop's duty to supply the poor and disabled with food and clothing where possible,[4] but also insisted that towns and villages should make similar provision for them.[5] Many strangers flocked into the towns, the centres of traffic and of trade. It was natural that the adherents of the new religion should foregather with the Christian communities which were forming there, and should seek to join them. Thus the Church extended the *diakonien* by establishing hostelries for strangers called *Xenodochien*.[6]

Many gifts which were made to the Church were especially intended for these benevolent activities. After the episcopal system was established, Pope Simplicius ordained that from the year 465 onwards the ecclesiastical income should be divided into four parts, one-fourth each being allotted to the bishop, to the building of churches, to the maintenance of the clergy, and to the distribution of alms among strangers and the poor.[7] The Church took the responsibility of almsgiving, and spread the idea that salvation could thus be ensured, a doctrine which was already developed by the time of Gregory the Great (590–604).[8] As in ancient times, it was the custom to give alms with the offerings for the dead at a funeral,[9] and also on the anniversary of the death.

The latest researches in legal history have proved that the demands of the Christian religion, together with the Roman example, led to the development among the Germans of the right of the paterfamilias to dispose of the common household property administered by him, the so-called right of free partition (*Freiteilsrecht*).[10] Thus within the Germanic legal system opportunity was given to a testator to leave his property to pious or charitable objects; and justice was also done to the German conception that the gifts should be requited, in order to be legally valid, since a heavenly reward, the remission of sins, was promised in return for them. This two-sided transaction in favour of the Church might cause the gift to be separated at once from the donor's property, or the donor might retain the right of usufruct during his lifetime. Frequently the gift was made in such a way that it was not transferred until after death (*donationes post obitum*).[11]

So the charitable work of the Church fitted into its new German surroundings, and not only influenced civil law in the new states, but also produced new factors in economic development, which were bound to have far-reaching consequences. The Church facilitated the disposal of property by substituting a one-sided will for the former two-sided donations. The arrangements for this disposal

[1] Cf. Haeser, *Gesch. d. christl. Krankenpflege u. Pflegerschaften* (1857), 9 ff., and Lesne, op. cit., 390 ff.

[2] See Germ. edit., ii², 211, note 69.

[3] Cf. K. H. Schäfer, op. cit., xcviii, 64, note 4.

[4] Cf. the Acts of the 1st Council of Orleans (511), c. 16, *MG.*, Concil., 1, 6, and further examples in Loening, op. cit.

[5] Cf. c. v, of the Second Council of Tours (567), *MG.*, Concil., 1, 123.

[6] Uhlhorn, op. cit., 1, 318, 407, note 3. Lesne, op. cit., 397 ff., and especially W. Schönfeld, "Die Xenodochien in Italien und Frankreich im frühen MA." *Zeitschr. f. RG.*, Kanon. Abt., xii, 1 ff (1922).

[7] Cf. Stutz Ulr., *Gesch. des kirchl. Benefizialwesens*, 1, 27.

[8] Uhlhorn, op. cit., 1, 280. [9] Ibid., 1, 282.

[10] See Germ. edit., ii², 212, note 77.

[11] Cf. R. Hübner, *Die donationes post obitum und die Schenkungen mit Vorgehalt des Niessbrauchs i. ält. deutsch. Recht* (O. Gierkes, *Untersuchungen z. deutsch Staats- u. RG.*, 26), 1888.

among the Germanic peoples bear the stamp of their religious origin even in their outward form. Provision for the soul (*Seelgerät*) and will (*Testament*) are used in German legal terminology with the same meaning. Provision for the soul was the most important matter, not the appointment of heirs—a very essential difference from the Roman type of will.[1]

Christian ethics were, as we know, based on ancient philosophy, but the Church fathers altered its principles to suit Christianity, or impregnated them with Christian ideas. An inclination to asceticism and renunciation had already appeared in Roman families,[2] and had led them to find refuge from the world not only in monasteries but also in active personal service to their needy neighbours, by founding hospitals and other benevolent institutions, such as centres for the distribution of food to the poor, and peoples' kitchens and libraries. A typical example may be seen in the life of St. Severinus who worked in Noricum in the fifth century,[3] and hospitals and infirmaries are found in France from the sixth century.[4]

Christianity also adopted from ancient models the right of sanctuary in its churches,[5] and this was especially attractive to the lower classes. Numerous fugitives flocked to join a religion which gave protection to many a man who was unjustly pursued and who thus could not be taken away by force; a number of examples in the sixth century are given in Gregory of Tours' *History of the Franks*.[6] Here, too, the Church was able to adopt her right of mediation to Germanic law, for she handed over the criminals who claimed sanctuary only when the injured man or his relatives had promised to forgo vengeance on payment of compensation.[7] The clergy could actually allow the man to escape if this assurance were not given. Slaves frequently used this right of sanctuary from their masters. They could be handed over only if the latter took an oath not to punish them. Civil law recognized this right of sanctuary in principle, without, of course, granting full freedom from punishment to criminals or permitting loss of property in the case of runaway slaves; but in actual practice it was often disregarded,[8] even though its transgressors were excommunicated.

The Church also helped and supported numerous slaves and unfree persons in other ways. At the beginning of the Frankish monarchy the Council of Epao (517) forbade masters arbitrarily to put their slaves to death, under pain of excommunication.[9] Here the Church was actively promoting a process which had already begun. We have seen[10] that Tacitus noticed the mild and humane treatment of slaves among the Germans and especially remarked that it was most unusual for them to be deliberately put to death,[11] and that it was forbidden among the Franks to sell slaves outside the country, lest Christians should go into slavery among the Jews and heathens.[12] The Church set a good example by decreeing that ecclesiastical slaves should be better treated than those in private hands;

[1] Alfr. Schultze, *Der Einfluss der Kirche auf der Entwicklung des German. Erbrechts.*, p. 106.
[2] Cf. Uhlhorn, op. cit., 1, 302 ff.
[3] Cf. Ratzinger, *Gesch. d. kirchl. Armenpflege*, 1, 118, and J. Jung, *Römer u. Romanen in d. Donauländern*, 2nd edit., 150, note 2, and 243 f.
[4] Cf. Loening, op. cit., ii, 648.
[5] Lesne, op. cit., 391 ff.
[6] iv, 13; v, 2, 14, 50; ix, 3, 38.
[7] Uhlhorn, op. cit., 1, 296 ff.
[8] Various bloody examples are given in Gregory of Tours' *History of the Franks*, iv, 18; vi, 12; vii, 22, 29.
[9] c. 34, *MG.*, Concil., 1, 27.
[10] See above, 248.
[11] *Germania*, c. 25.
[12] See above, 232 f.

a fourth of their payments and part of their personal services were to be remitted.[1]

At the same time a far-reaching and weighty enactment was made which was to secure the legal position of slaves who were transferred to the Church. It is very important from the point of view of social history, although this seems to have been insufficiently realized. The conveyor was to determine the legal position of slaves and of *immobilia* given by him to churches or monasteries, and the church was bound to carry out what he had stipulated in writing.[2] The purpose of this decree is quite clear, following as it does directly on that mentioned above, which lays down the mitigation of services to be performed by ecclesiastical slaves. Unfree persons transferred to the Church were clearly to be protected against any deterioration in their social position. Numerous Carolingian sources show that when a man gave his lands to the Church for the salvation of his soul, the slaves on those lands were often freed,[3] and they were to be protected from the danger of re-enslavement by the new owner.[4]

It is certainly true that the Church was not aiming at a general suppression of slavery and that she had no doubts as to the justice of this institution.[5] That would have been quite impossible at the time, both because of the great lay territorial lordships, which would have suffered severely, and because such a purpose would have been contrary to the important principle affirmed and always maintained by the Church, namely that ecclesiastical property was inalienable and must not be unjustly reduced.[6] Thus her position was clear; as in the case of transference of *immobilia*, a change in the ecclesiastical ownership of slaves was possible only if compensation were given. The Church encouraged and actually recommended the manumission of slaves[7]; but with the proviso that she should suffer no economic loss. This principle is clearly set forth in the decrees of the fourth Council of Orleans (541).[8]

It is now possible for the first time to establish the correct explanation of the well-known and oft-quoted passage in the *Lex Ribuaria*. The Church had not enforced a sanction by the civil law of its supposed prohibition of the sale of ecclesiastical slaves. The aim of this decree was rather to protect it from the arbitrary manumission of its slaves by the laity.[9] Apparently the *advocatio* and patronage of the laity were being misused for this purpose, and the Church was suffering severe loss by the emancipation of its slaves without compensation. I see in this legislation a measure for the protection of the Church, enacted by the Frankish kings to secure it against the detrimental consequences of the Frankish form of manumission *per denarium ante regem*. The men who were freed in this way attained full freedom and were therefore no longer dependent on the Church.

Clothar II's Edict of 614 re-affirmed the Church's view about the preservation of the social status of persons freed in Church.[10] The Church was not claiming anything different from, or more than, it had been granted at the Councils of

[1] See the decrees of the Council of Eauze (551), c. 6, *MG.*, Concil., I, 114.
[2] Ibid.
[3] See my *Wirtschaftsentwicklung der Karolingerzeit*, II², 46 ff.
[4] This is indicated more clearly by the decrees of the Council of Orleans (549), c. 7.
[5] See Loening, op. cit., II, 228.
[6] See above, 246.
[7] Cf. E. Lesne, op. cit., 234 ff.
[8] MG., Concil., I, 89, c. ix.
[9] This is clear from the connection between this Title (lviii, 3), and the preceding decrees.
[10] See Germ. edit., II² 218, note 103.

Orleans (549) and Eauze (551).[1] It opposed the demand that persons freed in Church by laity should be given back to their owners, and protected the rights which they had received by manumission. It also opposed the practice of judging these freedmen without the knowledge of their bishop or their provost, and of bringing them before the public court of justice. Legal historians have assumed that here the Edict of Clothar was denying to the Church the right of jurisdiction which it claimed over freedmen.[2] But the Church did not claim jurisdiction over all freedmen, only over those who were freed in Church and transferred to it by the laity, thus coming into its *mundium*. This is clearly proved by the decrees of the Councils of Orleans (549)[3] and Mâcon (585).[4] It is, moreover, untrue that the Ripuarian Law, in opposition to Clothar's Edict, abolished all private bondage (*Hörigkeit*) of freedmen.[5] As a matter of fact, the Church did not declare itself ready to afford legal representation and protection to all freedmen, and thus permitted all who had been set free but had not become free Franks to be in some sort dependent upon it. It was merely safeguarding itself from the withdrawal of those freedmen who had been transferred to it by the laity for the salvation of their souls[6] and did so by insisting on the maintenance of the legal status given by manumission, and seeing that this was enshrined in a written document.[7]

If the laity gave up their right of patronage over their emancipated *servi* in favour of the Church, they could not be reclaimed any more than gifts of *immobilia*. The comparison of these two, which is clearly expressed in the Council of Eauze, indicates that in both cases the Church was having some difficulty with the Germanic legal conceptions, which recognized only a temporary right of ownership.[8] The Church here assumed the privileges of the patron, and could, therefore, according to Roman law (*ecclesia vivit lege Romana*), assert its right to inherit his goods if the freedman died without children.[9] This view is confirmed by the Frankish charters of manumission, which show that not all the persons freed in Church became of necessity dependants of the Church, though they might seek protection either from it or from other people.

Thus the Church was responsible for a new and original development, which not only transformed the Roman *patrocinium*, but also set aside for its own benefit the German legal limitations on the Merovingian endowments. The significance of this transformation in social history is therefore clear; out of the interaction and fusion of important constituents of three cultures, the Roman law, the German law, and the Church law, something new and different arose.

A similar development may also be traced in connection with another class of the population, the widows and orphans. As the Church had already supported a wife's rights during marriage, and in particular had insisted on the indissolubility of marriage, in opposition to the repudiation of the wife which used frequently

[1] MG., Concil., i, 187, c. vii (v).
[2] See Brunner, *DRG.*, 1^2, 360, and R. Schröder, op. cit.
[3] See Germ. edit. ii^2, 216, note 95.
[4] *MG.*, Concil., 1, 167, c. vii.
[5] E. Mayer, *Zur Entstehung der Lex Rib.*, 152, assumed this.
[6] *Lex Rib.*, lviii, 1.
[7] Clothar's edict, c. 7: *MG.*, Capit 1, 22.
[8] Cf. Brunner, "Die Landschenkungen der Merowinger und Agilolfinger," *Sitz.-Ber. d. Berliner Akad.*, 1885.
[9] Cf. Loening, op. cit., ii, 239.

to occur among the Germanic peoples,[1] so also it regarded it as a divinely imposed duty to care for widows and orphans, and to uphold them against the oppression of civil judges. But here a careful distinction must be made. In this matter also, the Church made no general claim. It claimed to protect only those widows and orphans who had no other protectors.[2] It made no attempt to deny in principle the jurisdiction of civil courts over widows and orphans, but merely insisted that before they were prosecuted the representative of the Church, under whose protection they were, should be invited to be present, so that their legal affairs should be decided justly and in order, after a joint discussion.

Some widows were under the protection of the king; but not all. Those who took the veil were enjoined to enter a convent[3]; and the claim of the Church referred only to these. But there was a further category of widows who lived *religioso ordine*, but in their own houses.[4] These were clearly exposed to the oppression of the judges. It appears that not a few widows, perhaps on account of their property, were much sought after by influential and self-seeking courtiers, who induced the king to force them into a second marriage. In various councils in the sixth century[5] the Church attacked this practice and defended the widows. Only those widows were placed under the king's protection "who did not take the veil but went on with their old way of life." A corresponding distinction is made in the early Carolingian capitularies. Here, also, a certain power of jurisdiction over widows and orphans accrued to the bishop and abbot as well as to the count.[6] Thus the Church did not make demands in the sixth century (Mâcon 585) which it later relinquished.

The reason for the Church's claims lay in the ethical duty of giving protection to all who had none. For the same reason it also took charge of foundlings. The Church has been charged with withdrawing from these unfortunates the support which it originally gave them in accordance with Roman Imperial law,[7] but actually it kept strictly to the regulations of Roman law, according to which the foundling whose parents did not come forward became the slave of the man who had discovered or adopted him. This is proved by two Merovingian formularies (Angers 49, Tours 11). Such children were often placed at church-doors, and in both these sources *matricularii* are said to have received them. Clearly, therefore, it was well-known that the Church took charge of them, and that from it they would find the best protection and maintenance. If anyone found such a child he had to inform the Church. On the following Sunday an announcement was made from the altar by the priest, and the relatives were commanded to reclaim the child. If no one came forward within ten days, it was adjudged to the finder; but witnesses had to confirm the fact that it was not claimed. The document drawn up on that occasion was confirmed by the bishop, who thus controlled the whole matter.[8] The regulation that the bishop should sign the document concerning the acceptance of a foundling was maintained in

[1] Cf. Loening, ii, 606 ff., and Brunner, *RG.*, 1^2, 99 ff.
[2] This is clearly expressed in the decrees of the Council of Mâcon (585); cf. c. 12: *MG.*, Concil., 1, 169.
[3] *Concil. Latunense*, c. 12, *MG.*, Concil., 1, 218.
[4] Cf. the Council of Orleans (549), c. xix; *MG.*, Concil., 1, 107.
[5] Cf. the Council of Paris (556–573), c. vi, *MG.*, Concil., 1, 144.
[6] Cf. the Capitulary of Mantua (781). MG., c. 1. 190.
[7] See Loening, op. cit., ii, 246.
[8] Cf. Uhlhorn, op. cit., 1, 380.

the Frankish kingdom. This is seen not only in the Frankish formulary of Tours (No. 11) but also in its adoption by the *Lex Romana Visigothorum*.[1] Another fact proves that the attitude of the Church did not alter to the detriment of foundlings. The collection of formularies of Ansegis (*c.* 826) contains an extract from a *constitutio* of the Emperor Justinian (Novellæ), dealing with the inalienability of ecclesiastical *immobilia*. Among the latter, homes for foundlings (*brephotrophia*) as well as for orphans are mentioned as usually included in Church property.[2]

Among the weary and heavy-laden whom the Church assisted, prisoners were also counted. Here, too, ecclesiastical activity is linked to Roman custom, and again to the Imperial laws, one of which (409) especially deals with this matter.[3] The Frankish synods were not the first to organize this form of benevolence; it had long been customary for ecclesiastical officials to visit prisons and provide the prisoners with food. The Church's activity was especially directed towards the ransom of prisoners, and this naturally gained in importance, especially during the folk-migrations and the wars between the Germans and the Romans. In all contemporary Lives of Saints this aspect of ecclesiastical charity is emphasized over and over again.[4] But it was perhaps most in evidence where the invasion of Roman soil by Germanic peoples from the East pressed most heavily, that is to say in the region of Noricum on the Danube. The life of St. Severinus gives a detailed account of the services which the saint rendered in this direction.[5] Men actually used to visit the markets in the barbarian lands and collect a tithe in kind to feed the ransomed prisoners.[6] The epitaph composed for Bishop Valentinian of Chur (d. 548) by his successor praises him for devoting his wealth to ransoming captives,[7] and the Christian communities of Gaul are said to have been in the habit of sending priests to the Franks and other foreign peoples in order to ransom baptized prisoners.[8] In Italy, Gregory the Great took an active part in similar negotiations with the Lombards.[9] Finally, the Church also took charge of accused persons and interceded for them in order to obtain a lightening of their sentence or a revision or moderation of their punishment.[10]

Unlike anyone else at the time, the Church, with its great wealth, had the necessary resources for the performance of these social and political functions. On the one hand, it had at its disposal more ready money than any one individual could bring together, and on the other it possessed very extensive property in land, given to it for the salvation of the donors' souls. Priscus tells us that at the siege of Sirmium by the Huns (441–2), Bishop Constantius gave the golden church-vessels to a reliable person to ransom himself and other captives.[11] At the beginning of the sixth century, various sources show that the Church was accustomed to give to prisoners and pilgrims the usufruct of small estates, which

[1] c. 2, *Cod. Theod.*, v, 7; c. 1, v, 8; cf. also *MG. LL.*, sect. i, t. 1, 193, note 4. Also, Zeumer, *N.A.*, xxvi, 137.

[2] *MG.*, capit. 1, 311, No. 153. See the decrees of the Synod of Constantinople (536), *Mansi Concil.*, 8, 909c.

[3] Cf. Uhlhorn, 1, 381, note 76, and Lesne, op. cit., 357 ff.

[4] See the passages quoted by Loening, op. cit., ii, 248.

[5] *Vita S. Severini*, c. 6, 9, 10; *MG. AA.*, i, 2, 11 ff.

[6] Ibid. c. 17.

[7] Th. Mommsen, *Inscript. Helvet.*, 100.

[8] Cf. the quotation in Friedrich, *Kirchengesch. Deutschlands*, i, 416, note 1255.

[9] Cf. his *Letters*, vi, 32, vii, 23; *MG. Epp.*, 1, 410, and 466.

[10] See the passages quoted by Loening, op. cit., ii, 248, note 2.

[11] Bonner edition, 186.

were useless to it or which lay at a distance.[1] Such grants could of course be for life only, since a permanent alienation of Church property was forbidden, and they took the form of *precaria* (*Bittleihe*). These *precaria* were often charitable grants, made to the poor persons who could not support themselves,[2] and the Church was thus able to help the poorer classes of the community against economic ruin and the threat of enslavement, just as it endeavoured otherwise to improve and relieve the position of the *coloni* who were tied to the soil.[3] It is well known that *precaria* were made more and more extensively as time went on, especially in cases where the donee reserved the right of usufruct.[4] The charitable activities of the Church, and the hospitals, almshouses, and other benevolent institutions which it created, are sufficient explanation of a practice which now occurred with increasing frequency. The aged, the disabled, and the childless transferred their lands to the Church, thus procuring an annuity for the rest of their lives and providing for their old age or for their invalid state.[5]

The Church was the great credit institution of the early Middle Ages. It was able to provide ready money for all those classes who were essentially working under conditions of natural economy, and could not dispose of their property outright. From an early date a special pretext for transactions of this kind was provided by purely pious objects. Large sums of precious metal were sometimes required for pilgrimages to Rome *ad limina apostolorum*, or to the Holy Places in Jerusalem. But a similar need must also often have arisen in connection with equipment for war. The Church secured these sums of ready money by means of a contract of *precaria*, against a grant of immovables, with the understanding that they could be redeemed for an agreed sum. But even persons without property could obtain loans by pledging themselves, i.e. by setting their freedom in pawn (*obnoxiatio*).[6] Men who had forfeited their lives because of theft or murder and could not pay compensation might avoid the death sentence by voluntary asservation, and were then redeemed by their new master.[7] Thus, under the influence of the Church, yet another alleviation was brought about in the lot of persons who had lost their freedom, for they were now given the possibility of regaining their previous status by repaying the redemption money.[8]

By generously granting credit in cash, the Church effectually opposed the usurious exploitation of the poorer classes of the population. A number of passages have been collected, showing how vigorously it fought against usury in Roman times and down to the time of Gregory the Great (590–604).[9] Charles the Great has sometimes been represented as making a new attack on this abuse with his well-known decree against interest. It is true that the importance of his measures has been differently assessed. On the one hand they have been held to be a mere symptom of the so-called Carolingian renaissance, having no practical importance, since during an age of purely natural economy money-lending was

[1] Cf. Loening, op. cit., ii, 697, note 4, 705, note 1, and especially Lesne, op. cit., 314 ff.
[2] Cf. *MG. FF.*, 591, No. 36, and also the decrees of the Council of Orleans (541), *MG.*, Concil., 1, 95, c. xxxiv.
[3] See Germ. edit. ii², 215, note 91.
[4] Cf. Loening, ii, 706.
[5] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, i, 216 ff.
[6] Cf. H. Brunner, "Zur Gesch. u. Dogmatik der Wertpapiere," *Zeitschrift f. d. ges. Handelsrecht*, xxii, 65.
[7] Cf. H. Brunner, *RG.*, ii, 442 f.
[8] Cf. *Concil. incerti loci* (post a. 614), *MG.*, Concil., 1, 195, c. xiv.
[9] By Uhlhorn, op. cit., 1, 376 ff.

no longer carried on.[1] On the other hand, the general prohibition of interest in the Capitularies has been treated as an original innovation, both in form and in content, as compared with earlier times.[2] In either case, however, it seems to have been taken for granted that there were no laws against usury in Gaul, during the transition period after the collapse of Roman rule. In opposition to this view I have tried to show that Charles was not doing anything new, but that his measures were the direct continuation of those in vogue immediately before in the Merovingian Kingdom.[3] As a matter of fact, the third Council of Orleans (538) promulgated a decree against usury on the part of the clergy, from deacons upwards, and expressly forbade them to carry on business out of greed for filthy lucre.[4] Furthermore, later ecclesiastical legislation in the seventh century also made a stand against usury,[5] and not only against that which arose out of loans of money, but also against the usurious exploitation of personal obligations of service, in cases where a man's freedom was pledged (*obnoxiatio*).[6] In fact, the clergy, including those of the lowest rank, must have made many loans,[7] and the Church, even before the time of Charles the Great, again and again made a stand against usury.

In general, the Church's far-reaching activity on behalf of the poor and oppressed classes is a proof of the immense social and political importance which it had acquired. Its influence must have been all the greater, because at that time the state either did not perform these duties, or else only gradually absorbed them into its legislation at the instigation of the Church itself. Hence, we have the surprising phenomenon that in matters of social philanthropy ecclesiastical decrees rapidly gained a more general application and determined future developments. In the new German states, civil legislation on these matters followed on ecclesiastical legislation, and was therefore determined by it. Here, as in other points of civil law, such as the marriage law, it was the Church which led the way.

But the Church was able to achieve its object because of the great economic and social advantages which it could offer to large classes of the community. One particular factor in this new development must not be overlooked. When the Church, which itself observed the Roman law, undertook the further development of Roman legal principles, it encountered no coherent opposition on the part of the German laity or of the numerous Roman provincial inhabitants in these new states on Roman soil. A large proportion of the people in the new states were themselves interested in the enforcement of ecclesiastical law. This sheds fresh light on the fact that the chief opponents of ecclesiastical demands were the nobility and the secular territorial lordships.[8] Hence, it is understandable that the final victory of the Church was won only when the Frankish monarchy under the Carolingians, after its decline in the seventh century (caused by the overwhelming power of the aristocracy) helped to further the reforms introduced by

[1] See Fedor Schneider, "Das kirchliche Zinsverbot und die kuriale Praxis," *Festgabe f. Heinr. Finke*, (1904), 139.

[2] F. Schaub, *Der Kampf gegen den Zinswucher, ungerechten Preis und unlauteren Handel im Mittelalter* (1905), 33.

[3] *Die Wirtschaftsentwicklung der Karoling.*, ii², 281 ff.

[4] *MG.*, Concil., i, 82, c. xxx.

[5] F.X. Kraus' *Realencyklopädie d. christl. altert.*, vol. ii. 282.

[6] Cf. *Concil. incerti loci* (p.a. 614), *MG.*, Concil., i, 195, c. xiv.

[7] Further examples are found in the decrees quoted, and in the early Frankish formulae of Angers and Marculf concerning the receiving of *cautio*.

[8] See Germ. edit., ii², 229, note 162.

Boniface. In doing so it was acting in its own interest and with the intention of restoring its own absolute power. This is one of the most important reasons why ecclesiastical and therefore Roman influences maintained their hold for so long over the growing civilization of the early Middle Ages. There is no doubt that a strong monarchy, with power over the lay aristocracy, could have steered this course of development, with its crucial results for succeeding ages, along other channels, and thus brought out more definitely the national Germanic character.

The great struggle of the Church with the secular nobility, and the significance of the latter as the opponent of ecclesiastical pretensions, is seen most clearly in the so-called right of *Eigenkirche*, or maintaining a private Church, shown by recent scholars to be of fundamental importance in the light of subsequent developments. Ulrich Stutz, to whom we are indebted for the discovery and explanation of this whole institution,[1] was mistaken in so far as he thought it was of "primitive Germanic" origin, and was derived from the Germanic household priesthood or system of private temples.[2] There are serious objections to this view. The data supplied by Hatch,[3] Zhishmann,[4] and Pöschl [5] prove without a doubt that before the year 400 (when, according to Stutz, this institution first originated) chapels and churches were erected on the great Roman estates by their owners, who also appointed the Church officers just as they did their other economic officials. These lords were responsible for, and supervised, the celebration of divine service; they had to see that no heathen cult or idolatry, forbidden by the state, was carried on on their land.[6] The sources quoted by Zhishmann clearly show that these churches, like other private property, could be alienated, by sale, exchange, or gift made by the owner to other persons. We find them not only in the East but in Italy, at a time[7] which makes it impossible for them to have been first introduced by the Germans, an explanation which Stutz advances for their presence.[8] The privately owned church, therefore, seems to have been an adjunct of territorial lordship and the great estate, which might and did arise wherever the latter was developed, even among non-Germanic peoples.[9]

If the origin of the system of private churches is thus to be found in the seigneurial system it seems natural that the Germans should have adopted it, with other ecclesiastical arrangements, as part of their Roman inheritance.[10] In this connection the detailed information which has been collected about the various Germanic tribes can be co-ordinated into a more organic whole. Where Germanic races are found in Spain and Portugal in the early Middle Ages, in Galicia, Castile, and Leon, there we find the old uncurtailed right to own private churches. It remains untouched by the compromise effected between the Toledo Councils of the sixth and seventh centuries, and the owners of these churches.

[1] *Die Eigenkirche als Element des mittelalterlich. germanischen Kirchenrechts* (1895) and *Gesch. d. kirchl. Benefizialwesens* (i, 1895), and for a general summary the articles, "Eigenkirche," "Eigenkloster," in *Realencyklopädie f. protestant. Theologie u. Kirche, herausg. von A. Hauck*, 3rd edit., 1912.

[2] See Germ. edit., ii[2], 230 f.

[3] *Die Gesellschaftsverfassung der christl. Kirchen im Altertum* (1880), German translation by A. Harnack, 1883, 205 f.

[4] *Das Stifterrecht* (1888), 4 f.

[5] *Bischofsgut u. Mensa episcopalis*, 1, 33 f. (1908).

[6] Cf. the two Sermones 96 and 97 of Maximus, Bishop of Turin, in the fifth century. *Opera*, edit. 1784, Sp. 655 ff.

[7] Cf. A. Pöschl., op. cit., 1, 35; Luni, a. 492.

[8] *Arianismus u. Germanismus*, op. cit., Sp. 1575, and art. "Eigenkirche," op. cit., 5.

[9] See Germ. edit., ii[2], 232 f.

[10] Cf. also H. v. Schubert, *Gesch. d. christl. Kirche im Frühmittelalter*, 1, 27 (1917).

This right was therefore obviously [1] part of the early Gothic law. Long before the Burgundians adopted Catholicism under King Sigismund, they had private churches,[2] so we may assume that these two East Germanic tribes had copied the custom from the East Roman Empire, where it was widely spread, and had brought it westwards.

If the opposition of the Catholic episcopate to this private right among Visigoths and Burgundians is to be interpreted as due to the spirit of national antagonism, then the course of development in Gaul, and especially in Italy, is quite incomprehensible. But there is, in fact, a great difference between conditions in Spain and in Burgundy. The Lombard episcopate, in spite of the fact that it went over from Aryanism to Catholicism, never had a chance to oppose the custom; the private church system not only was continued there but was extended to the districts which had remained Roman, the Exarchate, Gaëta, the South, and even Rome. But here the question at once arises: why did not the Catholic episcopate in the heart of Roman territory defend itself against the incursion of foreign customs, instead of actually allowing them to spread to Rome itself, where opposition to Germanic influences should have been most effective?[3] The difficulty is at once explained if our assumption that Roman organizations continued to exist is correct. For in that case neither the bishops of Upper Italy, nor even the Roman bishops, would have found it to their economic interest to fight this custom; quite the contrary, for they had received a rich inheritance from their late Roman predecessors, and were themselves estate-owners with numerous private churches. This also explains why the private ownership of churches was so especially extensive in the bishoprics of Southern Italy [4]; for territorial lordships were very strongly developed there from late Roman times. Finally, the derivation of this custom from late Roman and not from Germanic origins is further supported by the fact that in the Beneventan districts traces are actually found of unfree clergy belonging to the private churches.[5]

Conditions in Gaul can be explained in a similar way. Stutz thought that among the Franks and other German tribes the private churches were taken over gradually, and that the process passed almost unnoticed. After the middle of the seventh century the German private church system gained ground among the Franks. Then in the eighth century "such churches sprang up like mushrooms." But would not such a course of development among the German tribes have been very extraordinary? If the private church were really an entirely German institution, we should expect it to have become important here at an early date and to have remained permanently in existence.[6] There was nothing to hinder its free growth.[7] As a matter of fact, the system of private churches was in existence among the Franks long before the date that Stutz assigns to it; for the decrees of the Council of Orleans of 541 prove far more than the fact "that the Frankish territorial lords also based their control over their churches on their land-owner-

[1] Art. "Eigenkirche," op. cit., 5.
[2] Cf. U. Stutz, ibid., and H. v. Schubert, "Staat und Kirche in den arianischen Königreichen," *Histor. Bibl.*, xxvi, 25 ff. (1912).
[3] See Germ. edit., ii², 234 ff.
[4] Stutz, op. cit., 117.
[5] Stutz, op. cit., Anm. 37.
[6] Thomas, *Le droit de propriété des Laïques sur les églises*, 30, has already pointed this out.
[7] Stutz, op. cit., 196 ff., esp. 203.

ship ".[1] Hinschius had already emphasized [2] that at that time no one questioned the territorial lord's ownership of church buildings and their endowments (chiefly land and rights connected with *immobilia*), nor his right of appointing their clergy.[3] But the phrasing of these decrees gives us no reason to assume that they were dealing only with Frankish lords : for both the place where the Council was held (Orleans) and the term used for territorial lords (*potentes*) show that, at least to some extent, great Roman landowners were taken into consideration. Indeed, if we look more closely, the signatures of the bishops present at the Council [4] reveal that those territories in which the real consolidated Frankish settlements lay, were not represented [5] : whereas the bishops of the Roman parts of Gaul were very numerous. The aims of the Frankish bishops may be clearly seen in these decrees. They did not oppose the right to private churches as such, but they attacked the encroachments and abuses of the territorial lords in their appointment of priests to oratories and parish churches, as well as their infringement of the archdeacon's power of correction.[6] The right to own private churches here seems to be of old standing ; there is nothing new or unusual about it.

It is now possible to offer quite a different explanation of conditions in Southern France and Spain, among the Visigoths and the Suevi. Here, too, the system was in existence in the fifth century,[7] as is proved by the decrees of the first Council of Orange (441),[8] and by the account which the Catholic bishop Apollinaris Sidonius gives in the second half of the fifth century of the behaviour of certain German owners of private churches.[9] It must also not be forgotten that in the South of France and in Spain the territorial lordship was directly connected with late Roman development, and became very extensive and politically important at an early date, and that these mighty landowners (*potentes*) [10] had a protective authority (*patrocinium*) over their properties and tenants.[11] The power of the episcopate in Spain grew steadily and the bishops often came into conflict with the lay aristocracy, but exerted decidedly more influence than the latter.[12] Moreover, in Spain the Catholic Church did not oppose private ownership of churches as such. The immense power of the bishops made it possible for them to oppose the encroachments of the territorial lords, and especially their claim to take half the income arising from the people's alms. The decree of the national Council at Braga (572) [13] shows that this practice had been going on for a long time, and that the church's opposition to it had as yet met with no real success. The bishops, with their great increase of power, wished to make these churches financially and economically independent of secular influence, and also to secure their own authority over them. Therefore the episcopate raised an outcry against the

[1] Stutz, *Benefiz.-Wes.*, 1, 137, note 12.
[2] *Das Kirchenrecht d. Kathol. u. Protestanten in Deutschland*, ii, 622 (1878) ; cf. also Loening, op. cit., ii, 639.
[3] Cf. also H. v. Schubert, *Staat u. Kirche i. d. arian. Königreichen*, 12 ff.
[4] *MG.*, Concil., 1, 96 ff.
[5] No bishop was present from Clothar's kingdom (Soissons), nor from the Provinces of the Belgae and Germania. Cf. also Hefele, *Konziliengesch.*, ii², 780, and H. v. Schubert, op. cit., 19 f.
[6] *MG.*, Concil., 1, 93, c. 26.
[7] Cf. H. v. Schubert, "Staat u. Kitche in d. arianischen Königreichen," *Histor. Bibl.*, xxvi, 8, note 2.
[8] c. 10 (Bruns, *Bibl. eccles.*, ii, 123).
[9] iv, 13 ; *MG. AA.*, viii, 65.
[10] Cf. F. Dahn, *Könige*, vi², 148, note 9.
[11] Ibid., 122 f., 131.
[12] Cf. Dahn, op. cit., 383 ff.
[13] c. 6. (Bruns, op. cit., ii, 241).

tributaria conditio, upon condition of which those churches had been founded by their territorial lords.

The tendencies seen in this process may be clearly followed in later developments. In Spain, especially in the seventh century, after King Reccared I (586–601) had been converted to Catholicism and had made it the state religion, there were numerous and increasing complaints against the bishops for their seizure of country and private churches.[1] This led, in 675, to King Wamba's decree against encroachments by bishops upon property belonging to individual churches in their diocese, and to his declaration that all appeals to the thirty-year limitation (*praescriptio tricennalis*) were null and void unless the prescribed period was not already terminated by the time the law was promulgated. It should be noted that it was laid down concurrently that the *heredes fundatoris* should be the first to be summoned to make the report or complaint against the offending bishop.[2] This shows how little the Catholic Church opposed private ownership of churches as such; and how clearly we must distinguish between the ideals of the Church and the new tendencies of its most important representatives, the bishops. These newer developments did change the previous state of affairs to some extent, but they should not be regarded as a dogmatic rejection of the whole system of private church-ownership on the grounds that it was a strange, perhaps a primitive and Germanic, and certainly a hostile institution. The bishops were themselves owners of churches, and would have injured their own interests if they had rejected the whole system.

The question now arises, what was the attitude of Aryanism to private churches? Aryanism has been described as the national form of Christianity, adopted at first by most of the Germanic tribes.[3] If, owing to its imperfect organization the Aryan, unlike the Catholic (*Eigenkirche*), did not come under episcopal authority,[4] then it might seem that the claim of the territorial lord to control and use his private church was the result of Aryanism. A high authority on these matters has advanced the theory that there was a very close connection internally between Aryanism and the private ownership of churches; moreover, an Aryan system of private churches is actually mentioned.[5] Against this it can be shown that private churches existed among the Anglo-Saxons and Scandinavians where in general Aryanism did not attain dominion,[6] and this has rightly been held to disprove their Aryan origin. The rise of private churches certainly has nothing to do here with the more national form of German Christianity. But neither does it prove in any way that the private church was a specifically German institution.[7] It has been shown to be an adjunct of territorial lordship in Iceland, and similarly among the Anglo-Saxons. We know to-day that among the latter, too, the territorial lordship was already extensively developed.[8] It should also be noticed that the acceptance of Aryan clergy and church buildings mentioned in the

[1] Cf. Stutz, *Benefiz.-Wes.*, 1, 106.
[2] *Lex Visigot.*, 5, 6; *MG. LL.*, sect. 1, t. 1, 203.
[3] Stutz, *Benefiz.-wes.*, 1, 95.
[4] Ibid., 111.
[5] H. v. Schubert, *Das älteste germanische Christentum oder der sog. Arianismus der Germanen*, (1909).
[6] Stutz, *Arianismus u. Germanismus*, op. cit., Sp. 1571 ff. Cf. Germ. edit., II², 242 ff.
[7] H. Boehmer, "Das Eigenkirchentum in England" (*Texte u. Forsch. z. Engl. Kulturgesch., Festgabe f. F. Liebermann*, 1921, 340), has recently thrown doubt on the common Germanic basis, pointing out that there is no trace in England of churches attached to houses or estates.
[8] Germ. ed. vol. I, 319 f. H. Boehmer (op. cit., 337) shows that in England the village church, like the village mill, was a seigneurial institution and was not founded by a free peasant community.

first Council of Orleans (511)[1] does not necessarily involve the adoption of Aryan systems.[2] In this connection the famous letter of the Metropolitan Avitus of Vienne to the Bishop of Grenoble (517) can be put in its right place. Avitus' opposition to the acceptance of heretical (Aryan) churches has been interpreted as antagonism to the system of private churches[3] which was so widely in existence among the Burgundians before their conversion to Catholicism and while they were still Aryans. But this does not appear to be a necessary conclusion. Just as the acceptance of Aryan churches at the Council of Orleans does not necessarily involve the adoption of Aryan methods, so also here the opposition to such an acceptance does not necessarily mean an opposition to the Aryan private church as such. The reason given by Avitus for his attitude seems to show that he merely wished to avoid the seizure of Aryan churches for Catholic purposes; a precedent was not to be set up, in accordance with which, if the King returned to Aryanism, the same procedure might be used against Catholicism.[4]

It is not, however, intended to suggest that the private ownership of churches was of Roman origin. On the contrary it was neither national nor denominational, for it occurs among the Greeks as well as the Romans and Germans, i.e. in every country where territorial lordship appeared and attained an independent standing owing to the feudalization of public authority.

The attitude of the Catholic episcopate was the same, whether it was opposing Aryanism among the Visigoths and Burgundians, or heathenism among the Franks, Celts, Anglo-Saxons, and Scandinavian peoples. As we see from the Council of Orleans (541),[5] the point was to break the great influence of the land-owning lay aristocracy over the country churches. In so doing, the bishops were fulfilling the duties of their office, as these had been developed since Constantine's Edict of Milan (313). The evolution of a monarchical constitution, which had been going on in the different Christian communities from the third century, was now recognized by the state.[6] The bishop had become the leader of the Christian community and had not only made the priesthood dependent on him, but had gradually overthrown the once great influence of the lay powers.[7] His authority was first consolidated in the sphere of spiritual leadership of the congregations; afterwards he also became the administrator and even the holder of Church property.[8] The alms and gifts of the pious were collected in his hands. After the legal recognition of the Church by the Emperor, and after it became lawful for it to receive testamentary bequests, these alms became more numerous, and gifts of material property likewise became more frequent. Is it not, therefore, probable that the holders of these ecclesiastical property rights would make every effort to eliminate outside influences from their administration? We can understand their attitude at the second Council of Orleans in 541, and the fact that they opposed the *tributaria conditio* of the country churches founded by territorial lords.[9]

This may also be explained from another point of view. We saw that the first Christian communities of the West arose in towns. Here in the *civitas* the bishop

[1] c. 10, *MG.*, Concil., 1, 5.
[2] Stutz, op. cit., Sp. 1620 f.
[3] Stutz, *Benefiz.-Wes.*, 109 f.
[4] *MG. AA.*, vi, 2, 35 ff.
[5] See above, 258 f.
[6] Loening, op. cit., 1, 103 ff.
[7] Cf. Hatch, *Gesellschaftsverfassung*, 144 ff., and Stutz, *Benefiz.-Wes.*, 1, 3.
[8] Cf. Loening, op. cit., 1, 234, and Stutz, *Benefiz.-Wes.*, 1, 6.
[9] See above 259 f.

had his see. The countryside clung for the most part to heathenism; but even where churches were founded in the neighbourhood of the towns they belonged to the urban community and were under its bishop.[1] It was, therefore, quite in accordance with this tendency in ecclesiastical administration that the bishop should also try to bring under his authority churches founded by the laity in the country. Undoubtedly one of the most effective means of extending and strengthening the power of the bishops lay in their economic strength.[2]

Though actual Church property was soon declared to be inalienable, the bishops had an unlimited power over the disposal of its income and produce,[3] not to mention the wealth which pious alms placed at their command. They dispensed therefrom abundantly. The poor, among whom there were from the beginning numerous adherents of Christianity, must have been all the more attracted by this fact. We have already seen that the charity and benevolence of the bishops was not limited to the giving of alms. In case of famine, corn was distributed, in time of war, captives were ransomed, and soon, as ecclesiastical organization advanced, the lower ranks of the clergy were supported by the bishop. As the spiritual control of the community became concentrated in him, and as his prestige as spiritual leader of the city grew, so also he must have appeared the most suitable person to settle quarrels among its inhabitants. As the preacher of brotherly love, qualified by his spiritual office to prevent violence and injustice, the bishop often appeared as the spokesman of his city when it was threatened from without, and tried to protect it.[4] The great renown and economic power thus attained by the bishops caused these appointments to be sought after by noble Romans of ancient lineage, even in the fourth century; Sidonius Apollinaris is a typical example in the fifth.[5]

From the towns, the bishop's influence was extended to the surrounding countryside. Not only did they send missions and found churches there, as we saw above,[6] but even as early as the fifth century the strong episcopal authority was able to open a campaign against the lay powers outside the urban congregations. A weapon was found in the institution of the archdeaconate, which had helped the bishops in exercising ecclesiastical authority over the lower clergy from the fourth century.[7]

The Council of Chalcedon (451) describes it as an old regulation that the urban bishop should have control over the clergy in benevolent institutions, monasteries, and chapels.[8] At the Council of Orleans (511) the Frankish bishops demanded the observance of the old canon law that all fields, vineyards, and slaves with their belongings, given by believers to the country churches, should be under the control of the bishop.[9] The question was whether the Frankish episcopate could enforce these claims in the new Germanic state. This depended partly on its relationship to the supreme power of the state. The fact that the Frankish bishops could thus proclaim their economic rights at Orleans shows clearly that they had an understanding with King Clovis, who had summoned the synod and had caused

[1] Stutz, *Benefiz.-Wes.*, 1, 4.
[2] Cf. Hauck, *KG.*, 1^2, 132.-1^4, 134. Also Lesne, op. cit., 33 ff., and 353 ff.
[3] Stutz, *Benefiz.-Wes.*, 1, 10. Also Lesne, op. cit., 333 ff.
[4] Cf. the fifth-century sources in Hauck, *KG.*, 1^2, $84-91^4$, 85.
[5] Cf. M. Büdinger, "Apollinaris Sidonius als Politiker," *Sitz.-Ber. d. Wiener Akad.*, xcvii, 915 ff. (1881).
[6] See above, 244.
[7] Cf. Loening, op. cit., 1, 159 ff.
[8] 8. *Canon.*, Loening, 1, 250.
[9] c. 15. *MG.*, Concil., 1, 6.

the thirty-two bishops who met there to recognize the principle of the royal right to intervene in ecclesiastical matters.[1] The monarchy and the episcopate the two great powers of the time, were in full accord and supported one another. The most perceptive of our recent ecclesiastical historians, A. Hauck, has justly urged that the greatness of Clovis as a statesman lay in his success in creating such, a relationship. "He turned these men of Roman origin into patriotic citizens of the Frankish Kingdom." [2]

This naturally leads to a consideration of the great problem of the nature of the Frankish state-church, in which the most important factor is the much-discussed conversion of Clovis to the Catholic religion. This exercised a decisive influence in the subsequent period, and was a determining factor in later medieval development. It has long been thought extraordinary that the Frank, Clovis, did not become an Aryan, like most other Germanic kings. There was certainly no lack of effort to win him over to Aryanism, which had already penetrated into his circle, and had been adopted by one of his sisters. His decision undoubtedly emphasized the contrast with other German states, and ran counter to any pan-German aspirations which may have existed, for instance in the mind of Theodoric the Great.

All modern scholars agree that Clovis' act was due to political considerations, and was taken with a view to its effect on the future of his kingdom.[3] It has often been assumed that a kind of early Frankish imperialism was the cause, and that the king hoped by this means to win over the Catholic clergy as important allies in his wars against neighbouring Aryan states, Burgundians and Goths.[4] According to this view his act was influenced by his foreign policy in the near future.

But too much weight must not be laid on Clovis' politics. In all probability his reasons lay much nearer home. He made a friendly alliance with the Aryan Visigothic king, and then waged war against the Visigoths as the ally of the Aryan Burgundians.[5] A far more likely explanation is, first, that Aryanism had no following in Roman Gaul, secondly, that the Frankish king was adopting the religious beliefs of the new Roman subjects whom he had incorporated in large numbers into his kingdom by taking over Roman Gaul. Catholic Romance people formed the majority of this population. Thus Clovis not only avoided a split between Catholics and Aryans in his kingdom, but the uniformity of religion, so effective at that period, was able to bridge the gulf between the Roman and Frankish populations.[6] Another consideration must also have affected him. He must certainly have realized the great power of the Catholic episcopate in the Gallic towns and elsewhere. In fact it was a political necessity for him to gain control over these influential bishops.[7] His behaviour immediately after his conversion shows that he fully understood their importance. Thus Clovis' decision was in all probability governed by internal politics and past events in his kingdom, and was not a speculation in foreign policy.

This conclusion sheds a new light on the congratulations which Archbishop

[1] Cf. Hauck, *KG.*, 1^4, 148 f. [2] Op. cit., 1^3, 149.

[3] Cf. also H. v. Schubert, *Gesch. d. christl. Kirche im Frühmittelalter* (1921), 90 f.

[4] G. Kaufmann, *Deutsche Gesch. bis auf Karl d. Gr.*, ii, 61 (1881), K. Lamprecht, *Deutsche Gesch.*, 1^3, 284 f., and R. Weyl, *Das fränk. Staatskirchenrecht z. Zeit der Merowinger* (Gierkes, *Untersuch.*, 27), 1888.

[5] Cf. Loening, op. cit., ii, 11.

[6] W. Schultze, *Deutsche Gesch. von der Urzeit bis z. d Karolingern*, ii, 67 (1896).

[7] Cf. H. v. Schubert, op. cit., 177, and also E. Babelon, *Le Rhin dans l'histoire*, ii, 13 f. (1917).

Avitus of Vienne extended to the newly baptized convert. We have already seen how wisely he estimated the reaction of the king's political attitude on the Church.[1] The fact that this ecclesiastical politician matched Clovis against the East Roman Emperor, and hoped for the spread of the true faith among distant peoples owing to his conversion, shows what the Frankish episcopate expected from Clovis. Had he perhaps already guaranteed that the Frank would fulfil these expectations? At any rate the decrees of the first Council of Orleans, summoned by Clovis in the year of his death, prove that the bishop's hopes were justified. It has already been observed that these decrees indicate in part the promises which the king had apparently made to the episcopate.[2] The outward form of their composition and promulgation is significant. Not only are they directly addressed to Clovis,[3] but they are described as the result of deliberations undertaken at the king's request and carried out with his agreement. A magnificent bouquet of concessions to the Church was herewith presented to the bishops. Not only did the king promise to provide poor churches with sufficient property (c. 5), and to hand over to the Catholic Church from his Visigothic spoils the hitherto Aryan churches with their property (c. 10); but he guaranteed the immunity of royal gifts of land to the Church (c. 5),[4] and recognized the bishops' authority over the country churches (c. 15), their share in pious oblations (c. 14), and, finally, the right of sanctuary (c. 1).

Clovis' desire to meet the Church half-way and to give her his royal protection against the seizure of her property or attacks from without, becomes particularly obvious in his letter to the bishops (*c.* 507–511),[5] which some editors have connected with the first Council of Orleans. The behaviour of the king and his example must soon have had a far-reaching effect. At the beginning of the seventh century the royal charters adopted as their basis the idea that benefits conferred on the Church secured the privilege of eternal reward.[6]

It has been sufficiently shown how rapidly the Church grew in the sixth century. Her riches were incalculable. The oft-quoted saying, attributed by Gregory of Tours at the end of the century to Clovis' grandson, King Chilperic, to the effect that the state-treasury was impoverished because all wealth had been transferred to the Church,[7] is only the reflection of the immense impression made on contemporaries by the economic development of ecclesiastical property.

But the episcopate had acquired great power not only economically but politically. Chilperic's saying, quoted above, continues with this important statement: *nulli penitus nisi soli episcopi regnant; periet honor noster et translatus est ad episcopus civitatum.* And as a matter of fact, if we read Gregory's *History of the Franks*, we are struck by the fact that the bishops are in the forefront of all events; they are the persons who act. His history of the state is really a history of the bishops. This is not merely because he was a bishop. The matter goes deeper than that, and must have been influenced by the whole geographical and political configuration of Gaul in the later Roman Empire. The Roman provincial division, partly based on the Celtic *Gau* system, and arranged according

[1] See above, 261. [2] Hauck, *KG.*, 1[4], 136. [3] *MG.*, Concil., 1, 2.
[4] See the later Præceptio of King Clothar II (584, esp. 628), *MG.*, capit. 1, 19, c. 11, which speaks of immunities granted to the Church by his *avus*!
[5] *MG.*, Capit. 1, 1.
[6] See records of King Childebert in 528, *MG. DD.*, 1, 5, note 3.
[7] *Hist. Francor.*, vi, 46. *MG. SS. rer. Merov.*, 1, 286.

to local folk areas (*civitates*), is continued in the diocesan system. The two were connected even in late Roman times; the centre and executive headquarters of the old folk-area became the bishop's see, the episcopal town (*civitas*).[1] We see the transition especially clearly in the so-called *Notitia Galliarum*, which describes the Gallic church-organization about 400, probably after the Council's decrees.[2]

The political collapse of the Roman Empire in the West was to the advantage of the bishops, for then many duties which the sinking state could no longer carry out automatically devolved on them. Romanism found its last props in them, and in them the Roman population sought and found support, largely because they belonged to the old and rich families of the towns. This lasted throughout the sixth century.[3] Often one noble family was able to retain episcopal power, because the people chose their bishop again and again from the same family.

The good terms on which the Frankish kings stood from the beginning with the episcopate explain in large part why there was so few serious conflicts between the king and the bishops in the towns during the sixth century.

The inheritance from late Roman times, which came to the episcopate during the early Frankish period, also explains the political role of the bishops. The important position which they soon assumed in all the general affairs of state was not created by them, but was firmly established much earlier. The Frankish kings did not interfere with it, and indeed maintained a conservative attitude to all Roman arrangements.[4]

The after-effects of Roman conditions were especially obvious in Spain, where the bishops, as in Gaul, had had a well-established position in the towns from late Roman times, and now increased their power. This was also to some extent the case in Italy, for the Lombard conquest did not cause an interruption or destruction of the episcopate.[5] As long as the Lombards were Aryans, they had very little influence on the Catholic bishops. All that happened was that side by side with these there were also Aryan bishops. The influence of the Catholic bishops only really made itself felt when the Lombard kings themselves went over to Catholicism (*c.* 680).[6] For the Roman episcopate the important point was that it had consolidated its central and supreme spiritual position and created a Papacy, and that, owing to its rich landed possessions, it was able to maintain an extra territorial princely power in face of the new conquerors. On the basis of its international importance it fought successfully for its independence against the Lombards, and for the same reason was able to use the political quarrels of the European states to its own advantage against various oppressors. The fact that the Lombards were Aryans at the time of, and for a century after, their conquest of Italy, made it easier for the Pope to carry on the political struggle on behalf of his own position as Bishop of Rome, while the other bishops outside Rome found in him strong and constant support.[7]

The Catholic episcopate possessed great internal force because its spheres

[1] Cf. A. Longnon, *Atlas histor. de la France, Texte explicat.*, 1907, introduction, iii, and ibid., 14 ff.; also the article, "Civitas," by Kornemann, Pauly-Wissowa, *RE.*, Suppl., also E. Babelon, op. cit., ii, 6.

[2] Edid. Th. Mommsen, *MG. AA.*, ix, 552 ff.

[3] Cf. Waitz, *VG.*, ii, 2^3, 58 f., and Hauck, *KG.*, 1^4, 132 f.

[4] Cf. above, 109 f.

[5] F. Schneider, *Die Reichsverwaltung in Toskana*, 1, 36, note 3; xcii, 157, note 4; 216, note 4.

[6] Cf. also H. v. Schubert, *Gesch. d. christl. Kirche im Frühmittelalter* (1921), 250.

[7] Cf. G. Tamassia, *Longobardi, Franchi e la Chiesa Romana* (1888), 199 f.

of interest were uniform and co-ordinated, not only spiritually but also economically and politically, as compared with those of the new rulers. Moreover, it always had at its command the Councils, which functioned regularly and constitutionally, bringing about unity and agreement; and these were bound soon to become politically important, on account of the great importance of individual bishops in the state. G. Waitz, one of the greatest authorities on early German constitutional history, considered that these councils "were almost more important in affairs of state than in the questions of ecclesiastical order and discipline with which they were supposed in the first place to deal."[1]

Thus the alliance between spiritual and political authority, characteristic of the new states, originally came into existence owing to the peculiarly powerful position of the episcopate at the end of the Roman period; besides being the ecclesiastical authority, it was also, owing to its economic importance, a political power in the towns, and hence in the provincial administration. This was due to the fact that the new Germanic rulers had founded their states on Roman soil, and continued the earlier lines of development. It was intensified by the practice, which prevailed in Gaul during the fifth and sixth centuries, and later in Spain, of choosing as bishops men of a certain age, who had previously held important posts in civil administration.[2] These men were consequently often laymen, and their practical experience in a secular post was a recommendation, since it equipped them for the important economic tasks which a bishop had to perform. A good example of this attitude may be seen in the speech in which Apollinaris Sidonius recommended Simplicius as Bishop of Bourges,[3] which also shows[4] that already at that time bishops were often sent on political missions (*legatio*), either on behalf of their town or diocese, or of their king.[5] The great culture of these members of distinguished Roman families was certainly a valuable asset on such occasions, and was probably rarely found elsewhere. In the sixth century it appears that counts or court officials were especially favoured by the king or queen for election to bishoprics, and were appointed on their recommendation.[6]

Thus the personal activities of individual bishops brought about an extension of their sphere of action to secular and especially to political affairs. The prestige of their ecclesiastical dignity made them seem particularly qualified to decide quarrels and to settle political conflicts. Not only were the bishops the king's councillors, but even in the sixth century they were already taking part in all political affairs of general importance. They represented the spiritual interests of their towns and dioceses. The splitting up of the kingdom, and the subsequent quarrels among the rulers of the new sub-divisions[7], increased the power not only of the lay aristocracy but of the bishops. The famous Edict of Clothar II (614), which definitely guaranteed the great privileges gained by Church and nobility during the previous confusion, was promulgated by the king *cum pontificibus vel tam magnis viris optematibus aut fidelibus nostris in synodale concilio.*[8]

In the Acts of the contemporary Synod of Paris the aim of the bishops is thus specifically described: *tractantes, quid quomodo principis, quid salute populi*

[1] *VG.*, ii, 2^3, 60 f.
[2] See the passage in Avitus of Vienne, *Poemat*, vi, 655 ff. *MG. AA.*, vi, 293 f.
[3] *MG. AA.*, viii, 113 ff.
[4] Ibid., 116.
[5] Cf. Loening, op. cit., ii, 259.
[6] Cf. Gregory of Tours, *Histor. Franc.*, vi, 38; viii, 22.
[7] Cf. above, 198 ff. [8] c. 24, *MG.*, Capit. 1, 23.

utillius conpeterit vel quid ecclesiasticus ordo salubriter observaret.[1] The similarity between these two quotations illustrates the measure of episcopal influence on all public affairs. Synod and state assembly coincide.

This influence of the bishops was especially great in Spain, where the councils, which were also attended by secular nobles, really did the work of the state assemblies, and controlled political affairs by their decisions.[2] In Italy the bishops were not so important at first, partly because of the schism with Rome which was encouraged by the Aryan Kings of the Lombards.[3] But there was a great change after the seventh century, when the Lombards became Catholic and the Roman Catholic hierarchy was recognized in their kingdom. The bishops were restored, and the Church was reorganized in a manner which was greatly to their advantage. They took an important place at the Roman synods of 649 and 680, and under King Liutprand they were already in possession of large estates. In Italy, more than anywhere else, the towns remained the centre of the whole territorial administration, and this made the bishops, who had their sees there, increasingly important; the diocese corresponded to the secular *territorium* of the town,[4] and its ecclesiastical head became more and more influential in secular matters also.

Among the Irish and Scottish peoples the Church organization was mainly monastic in character, and this forced the bishops into the background.[5] But in England an approach to Rome was made after Wilfred's time (Deira) about the middle of the seventh century, and this led to a greater participation of the episcopate in secular affairs, a process considerably hastened by the organization of the Church by Theodore of Tarsus, Archbishop of Canterbury.[6] Corbett has very properly laid stress on the fact that this secularization of the episcopate and the development of episcopal territorial lordships was not English in origin, but was introduced from without, probably in imitation of Romano-Frankish models.[7]

While in this way the bishops were achieving a combination of spiritual and secular power, the monasteries practised asceticism and encouraged renunciation of the world. They were thus often situated on the waste lands or in unfrequented places. We can hardly doubt that some degree of opposition to the episcopate prevailed in Gaul during the fourth century. The history of St. Martin shows this clearly enough.[8] In the fifth century there was a considerable increase in the number of monasteries, which may have been due not only to ascetic ideals but also to economic and social conditions. They were refuges for the unfree who were groaning under the yoke of Roman lordship, as may be clearly seen in the decree of the Council of Chalcedon (451), in which it is laid down that slaves may not be accepted by a monastery without their master's permission (c. 4).[9] The monks were laymen. According to the decrees of the same council they were not to leave their monastery or concern themselves with ecclesiastical or secular matters. The monasteries were, however, already under the bishop and his consent was necessary for their foundation.[10]

[1] *MG.*, Concil. I, 186, note 1.
[2] Cf. Dahn, *Könige*, VI[2], 436 ff., and H. v. Schubert, op. cit., (1921), 179 ff.
[3] Tamassia, op. cit., 196.
[4] Cf. F. Schneider, op. cit., 39 ff., 62 ff., esp. 139.
[5] Cf. Stubbs, *Lectures on Early English History* (edit., Hassall, 1906), 243; v. Schubert, op. cit., 1921, 206 ff.
[6] Cf. Corbett in *The Cambridge Medieval History*, II, 554 ff. (1913).
[7] Ibid., 558.
[8] Cf. Loening, I, 340.
[9] Ibid., I, 350.
[10] Cf. Pöschl., op. cit., I, 81.

The Germanic conquerors were also strictly conservative in their attitude to these arrangements of the late Roman period. It is well known that the Frankish kings, from Clovis onwards, greatly favoured the monasteries; they not only made them gifts of land, but caused new monasteries to be founded, and often kept in close touch with them. From the beginning of the sixth century certain abbots became influential at court, and sometimes these became bishops. Thus a closer understanding sprang up between the monasteries and the episcopate. Owing to the rapid increase of new monasteries among the Franks and their rich acquisitions of land, the bishops had good reason to put the decrees of the Council of Chalcedon into effect, in particular because monastic houses were now being erected by private people on their own lands, and these landowners were claiming a share in the gifts and income of such *Eigenklöster*, or privately-owned monasteries. Here there was a danger of competition with the bishop. Would he succeed in bringing these rich and numerous monasteries under his control, or would they secure emancipation from him, perhaps with the help of those laymen who were accustomed to appoint the abbot of their own monasteries? And originally the prospective abbot was not even required to be in orders.[1]

We see from the Councils of the first half of the sixth century how greatly this question occupied the attention of the bishops, who obviously realized its importance. To assume that the monastic system in Gaul was so little developed that the monks there were relatively insignificant people is to underrate the importance of the monasteries. We see from the decrees of the Councils of 506, 517, 538, and 541,[2] that the bishops were not solely concerned with the spiritual guidance and supervision of the monasteries, but also with the problem of gaining control over their continually increasing wealth. This can have been no easy task at that time, for there was no one uniform monastic organization; several different orders existed.

The founder of a monastery could exercise a decisive influence upon its affairs. In the middle of the fifth century the Council of Arles gave a decision favourable to the monastery in a particular case, the complaint of the Abbot of Lérin against the Bishop of Fréjus. In the Frankish Church this formed a precedent for the regulation of such relationships. After the Lérin case, the Luxeuil case also established a precedent for the bestowal of privileges, giving protection against abuses and encroachments on the part of the bishops.

The mention of Luxeuil brings us to that important phase of development heralded by Columba and his Irish-Scottish Church-system. Owing to the peculiar social conditions of Ireland, to wit the existence of a clan or tribal system,[3] the Celtic Church fostered freer and more independent monasteries. It was not that there were no bishops, but the bishops that there were had no power of jurisdiction, as they had on the continent; in Ireland it was the monastic abbots who held the reins. Columba tried to introduce this system into the Frankish kingdom also. After 590 he himself founded several new monasteries there (including Luxeuil), from which an enormous number of others sprang up in the seventh century[4]; and in all these "the enduring result of Columba's monastic

[1] Loening, op. cit., ii, 375, and Hauck, op. cit., 1^3, 237=1^4, 247.
[2] Cf. Hauck, *KG.*, 1^4, 245, and Pöschl., op. cit., 1, 87, note 1, and 88.
[3] Cf. the article, "Keltische Kirche," by Zimmer, op. cit.; Hauck, *KG.*, 1^2, 251 ff.=1^4, 261 ff., and Whitney, in *The Cambridge Medieval History*, II, 526, 533 (1913).
[4] Hauck, op. cit., 1^4, 288 ff., enumerates these.

foundations" was that many monasteries were independent of their diocesan bishop.[1] It is no coincidence that the number of monastic privileges thereafter began to increase and developed rapidly, and that Resbach in 635 for the first time received a royal charter, which, together with the now non-existent charters of Luxeuil, became the model for a series of later foundations.[2] Resbach was founded by the sons of Autharius, with whom Columba himself had found a kindly refuge on his flight from Queen Brunhild.[3]

The number of these independent monasteries founded under the influence of Columba steadily increased. They even found their way into Germany. What is the significance of this? According to the opinion of a contemporary the various provinces of Gaul were literally strewn with monasteries and convents. Not only did hosts of monks and nuns swarm all over the country and settle in villages and cities, but they even found their way to distant and uninhabited regions, where hardly any monasteries had been seen previous to that time.[4] Their numbers increased steadily. The source quoted above speaks of *agmina monachorum* and *examina puellarum*. They must have proved a formidable attraction for the lay population.

The privileges obtained by these monasteries were directed against the encroachments of the bishop, under whose diocesan power they were placed. These privileges were sometimes granted by the bishop himself, particularly in the case of houses of which he was the founder. But laymen, too, with increasing frequency, insisted from the very outset upon a greater degree of independence as a condition of their gifts.[5] The kings, who founded many monasteries, were particularly insistent upon this, and there were also here and there *Eigenklöster* over which, as over country churches and oratories, the landowner retained a right of control. These developments soon gave rise to another practice. At first it was essential to obtain the initial consent of the bishop to these privileges; if his successor in the episcopate disregarded them, the monastery would try to get the king to guarantee the greater independence which it had attained. Thus monastic houses began to aim at obtaining royal confirmation of their privileges. Sometimes, especially where the king was one of the founders, a royal privilege was granted first, and then, at the king's request, a similar privilege was sought from the bishop. He could hardly refuse this favour, on account of the relationship that existed between the royal power and the episcopate.

The regulations contained in the royal privileges granted to Resbach (635) show the main points at issue. The bishop was to have no control over monastic property or the income therefrom, and he was to enter the monastery only by invitation of the abbot and in order to fulfil his special ecclesiastical functions without annoying the monks. If there was a vacancy, the new abbot was to be chosen by the congregation according to the rule of the order, and the elected person was to be installed by the bishop.[6] It is obvious that the bishops had been using their spiritual jurisdiction over the monasteries, and their opportunities for carrying out certain spiritual functions (e.g. the dedication of altars, the consecration of the chrism, ordination, etc.) in order to demand payment, or to make other claims.[7] This might

[1] Ibid., 1^4, 310. [2] Th. Sickel, *Sitz.-Ber. d. Wien. Akad.*, xlvii, 567 f.
[3] Hauck, op. cit., 1^4, 290.
[4] Cf. the *Vita Sadelbergae abbat. Laudun.*, c. 8; *MG. SS. rer. Merov.*, v, 54; also Hauck, op. cit., 1^4, 298, note 3.
[5] Sickel, op. cit., 568. [6] Sickel, op. cit., 571. [7] Sickel, op. cit., 572.

happen all the more easily as the monasteries grew richer and pious gifts flowed in in larger quantities. Their great wealth must have become much more tempting when, at the end of the sixth century, internal confusion and the rise of the secular nobility brought a large number of Frankish bishoprics into the hands of wordly men, who were not interested in their dioceses and had risen by means of avarice and violence.[1] A successful stand was now made against these men, and economic dependence on the episcopate was abolished. The necessary preliminary to this was freedom to elect the head of the house. The monarchy was persuaded to support these aims, partly because certain monasteries or their founders planned a transference to royal authority and placed themselves under the King's protection.[2]

The relationship between the monarchy and the Church thus became closer, and gradually broadened its scope. We have seen how significant Clovis' attitude to the episcopate was from the very beginning. At that time the Church and her most important representatives in Gaul regarded their dependence on the king as a matter of course. This was not only because hitherto in the Roman Empire the emperor, as head of the state, had possessed such rights and they could hardly be refused (as in the Aryan kingdoms with their heretical kings) to the Frankish king when he went over to Catholicism. Nor was it due solely to the fact that the Frankish king had an almost unlimited authority over his whole land, for that was true also of the Aryan kingdoms. The main cause was that it was to the interest of the Catholic Church itself. The Church stood in more need than ever of protection while political conditions were being reshaped in the German countries; and it was the monarchy from which the bishops expected and even implored such protection.[3] It was not only the actual conditions of authority, the constitutional rights of the Frankish king, which made the subordination of the Church to the representative of state authority seem a matter of course. The bishops themselves had every reason to recognize that authority and even to emphasize it, for only the Frankish king, after his conversion to Catholicism, could give that security against the neighbouring Aryan kingdoms, of which the Church was now in sore need. Aryanism had made gigantic strides. Even during the revival of the Frankish monarchy by Clovis' wars, Church property was often plundered and diminished.[4] The bishops knew very well what they were about when they laid such obvious emphasis on the supreme power of Clovis, the mighty Frankish monarch; for they derived from it the fact that it was his duty to protect the Church. The practical results of this, in all questions connected with the legal position of the Church, are obvious. By placing themselves under the king's protection, they recognized his supreme authority; and this corresponded to both Roman and Germanic views on *patrocinium*.[5]

It has sometimes been suggested that Clovis acted in ecclesiastical matters not as a law-giver but as a politician.[6] In point of fact both powers, the king and the bishops, although they realized their own importance, recognized equally clearly their mutual need of one another. The bishops also acted as politicians at that time. In their attitude to the state they were not guided solely by the regulations of ecclesiastical law, but were clearly influenced by political considerations.

[1] Sickel, ibid., 566.
[2] See the greeting sent to Clovis at his christening by Avitus of Vienne, *MG. AA.*, vi, 2, 75.
[3] Cf. Loening, op. cit., ii, 387.
[4] Cf. Loening, op. cit., ii, 7.
[5] See below, Chapter ix.
[6] Hauck, *KG.*, 1^4, 149.

What, then, is the origin of the Catholic National Church ?[1] A complete system of law forming the basis of such a Church can hardly be said to have been in existence in the early stages of the Christian monarchy under Clovis. Researches into the appointments to various bishoprics have shown that the canon law, prescribing the election of bishops by clergy and people, was not deliberately set aside by Clovis, but was in general observed.[2] "It became apparent everywhere that a new element had to be reckoned with, in the shape of a monarchy that was a real power. Its influence was felt, but its relationship to other factors in the situation was as yet undefined. The task was to define that relationship, and that task was performed by Clovis' successors."[3] A wealth of examples may be culled from Gregory of Tours to show that the election of a bishop by clergy and congregation never passed completely out of use. The king exercised a decisive influence on this "election" and in reality appointed his own candidate, but he did not do away with the practice of election as such. He recognized it as the legal form, even when he made the appointment, and himself stressed the importance of holding it and complying with its methods.[4] In actual practice nomination by the king took place from case to case, though it was not yet a legal right, claimed on principle and recognized as of universal application. Thus after the death of Clovis many free elections by clergy and congregation took place and were merely confirmed by the king[5]; in 549 the fifth Council of Orleans declared this form of appointment to be the canonical one, and the Council of Paris in 557 opposed appointment by the king.[6] Clovis' successors proceeded to some extent quite arbitrarily, which led Hauck to conclude that Clovis could not have fixed any normal legal procedure as regards the king's co-operation.[7] "His procedure fell as far behind the assumed norm, as that of Theoderic and his grandson exceeded it."

A consideration of procedure in Italy shows that this royal right was not taken over from Aryanism. In the Lombard kingdom not only the king or duke take part in the appointment of a bishop, but the assent of the royal officials was also necessary for the ordination of deacons and priests by the bishop.[8] Tamassia showed that this right probably goes back to late Roman custom and was not a Lombard innovation.[9] Moreover, at that time the Pope already had considerable influence in the appointment of bishops in Italy.[10]

A comparison of conditions among the Aryan Visigoths in Spain reveals a marked difference between the earlier and later periods. As long as the Lombards and Visigoths were Aryans, there was little influence on the elections to Catholic bishoprics. On the contrary, the late Roman form of appointment is found here also, and in Spain a bishop often appointed his successor during his lifetime.[11] When the Visigoths and Lombards went over to Catholicism, the king's influence increased in importance.[12] It is clear that the chief factor in this development was not Aryanism, but the political importance gained by the episcopate in affairs of state and in the councils summoned by the king.[13] The non-Aryan Anglo-Saxon

[1] See Germ. edit., ii[8], 265 f., for v. Schubert's hypothesis.
[2] Cf. Hauck, *Die Bischofswahlen unter den Merowingern* (1883), 14 ff.
[3] Hauck, op. cit.
[4] Ibid., 11.
[5] Loening, ii, 177.
[6] Ibid., 179 f.
[7] *Bischofswahlen*, 19.
[8] v. Schubert, *Histor. Bibl.*, xxvi, 119.
[9] *Longobardi, Franchi e la Chiesa Romana*, 124, and 194 ff.
[10] Cf. L. M. Hartmann, *Gesch. Italiens*, ii, 1, 160 ff.
[11] Dahn, *Könige*, vi[2], 395.
[12] Ibid., 396 f.
[13] See above, 263 f.

kings enjoyed a similar influence and for the same reasons; the measure of their influence varied according as their bishops, who at first[1] were politically unimportant, acquired political significance.[2]

This makes it possible really to understand subsequent developments in the Frankish kingdom. With the decay of royal power in the second half of the sixth century the king's right of nomination declined. The *Magna Carta libertatum* (614) of the greatly strengthened aristocracy expressly recognized the canonical election by clergy and congregation.[3] The Edict of Clothar II attempts a reconciliation on this point between the two rival powers, the aristocracy and the monarchy. The royal right of confirmation is expressly mentioned. This confirmation was to precede the consecration of the elected person. Neither royal power nor ecclesiastical independence was to be unlimited; the co-operation of Church and state was necessary for the legal appointment of a bishop.[4]

Later, when a strong centralized power grew up in the office of Mayor of the Palace, the Arnolfings once more used it for the appointment of bishops, as is clearly shown by Ebroin's behaviour in 679–680.[5] Indeed, they went a step farther, and when privileges were bestowed upon monasteries, at any rate on their own private houses, they demanded a promise of allegiance from the abbot-elect,[6] a precaution which may have been due to the disturbances of the time and to the political conflicts which were dividing the nobility.[7] This demand for allegiance from monastic officials was continued by the early Carolingians, especially by Charles the Great, and was also encouraged by the bishops in the few cases where the latter had been elected by free choice. In general Charles insisted on his inherited right to nominate bishops.[8] It is thus apparent that procedure in these matters followed no recognized legal norm, but depended on the real measure of political power wielded by the monarchy of the day.

We come now to the question of entry into the clerical profession. The fact that here, too, the confirmation of the Frankish king was necessary must have arisen as an adaptation of Roman regulations, intended to prevent any evasion of taxation, or diminution of the tax-paying or taxable population. For a Canon of the Council of Clichy (626) shows that at any rate by that time such considerations were really an important factor.[9] Moreover, the law of the Emperor Maurice in 592 should be noted in this connection; it lays down that no official or soldier may become a cleric or monk until he has finished his service.[10] The ecclesiastical principle that any man entering the ranks of the clergy must be free, so that he be not diverted by old duties from his new duty to God,[11] was in practice certain to cause the state to claim this right of confirmation. Even slaves could not enter the clerical profession except with the consent of their masters, or after manumission. In the Germanic, and especially in the Frankish, state this royal privilege was all the more strongly emphasized, since freemen were linked to the governing power by a tie of loyalty, strengthened by an oath of allegiance to the king, and binding

[1] Cf. Stubbs, *Constitutional History of England*, I[5], 222.
[2] Ibid., 235 ff.
[3] Cf. Loening, op. cit., ii, 182.
[4] Hauck, *KG.*, I[4], 164.
[5] Cf. Hauck, *DKG.*, I[4], 398.
[6] Cf. E. Mühlbacher, Die Treuepflicht in den Urk. Karls d. Gr. *Mitteil. d. Instit., Erg.-Bd.*, vi, 874 (1901).
[7] See above, 209 f.
[8] Mühlbacher, op. cit., 877, f.
[9] c. 8, *MG.*, Concil., I, 198.
[10] Cf. L. M. Hartmann, *Gesch. Italiens*, ii, 1, 189.
[11] Cf. Loening, op. cit., I, 139 ff.

them to the performance of certain public services (military, legal, etc.).[1] In the Merovingian kingdom from the sixth century onwards the homage of the subject appears as a definite traditional custom.[2] H. Brunner was of opinion that this general oath was not originally a right of the Germanic monarchy, but goes back to Roman precedents among the Franks, the Goths, and Lombards.[3] The king's right to make this entry dependent on his assent may be explained by a complementary enactment, to which special attention should be drawn. This is the prohibition of any kind of private association which was not to the advantage of the state as a whole, on the ground that such associations were incompatible with the general oath of allegiance.[4] Thus this phenomenon in the ecclesiastical law of the Merovingian state is also capable of an organic explanation, independent of the influence of Aryanism.

The state tried to protect itself against the losses which threatened it in consequence of the enormous growth of the Church and her power of attraction in the economic sphere. These considerations were the cause of the limitations and difficulties introduced at this period into the conditions of land-conveyance (such as the requirement of a will in writing and of witnesses,[5] the enactment of a right of pre-emption by the nearest relatives, etc.).[6]

The great increase in gifts of land to the Church in the interest of salvation brought about economic and social changes which in the long run inevitably affected the state. Some time ago the attention of scholars was drawn to the fact that in Bavaria the duke's assent to such transferences of land to the Church is explicitly mentioned in the charters, and from this it was concluded that his specific assent was required for every such grant of land.[7] But Brunner pointed out that in the *Lex Baiuvar.* and the Dingolfing decrees it is expressly stated that no one should hinder freemen from giving their property to the Church.[8] He was also of the opinion that the Bavarian law, requiring consent to pious gifts, was unique in the Frankish period. He realized that the ducal assent might be due to various causes, not only because the land to be conveyed might in some cases be a ducal fief, but also because the donors themselves might be *homines potestatem non habentes*, who needed that permission if the property in question was not given to them by their lord. Brunner went on to suggest that gifts of land obtained by clearing fiscal woods or wastes also required the duke's assent. Finally, he very rightly pointed out that often there is no question of consent to alienation, but merely of the agreement of the duke to the erection of new churches, to the grant by freemen of their own persons, or to the grant of free children to an existing church. Not infrequently the consent was required merely for purposes of corroboration against impeachment by others.[9]

Brunner's view is undoubtedly correct, but he has not carried his deductions from the Bavarian charters far enough. A similar procedure may be seen among

[1] Cf. P. Roth, *Gesch. d. Benefiz.-Wes.*, 109 ff.
[2] H. Brunner, *RG.*, ii, 58.
[3] Ibid., 61.
[4] Waitz, *VG.*, 3², 304; cf. also 4², 434 ff., and A. Meister, in *Festgabe f. H. Grauert* (1910), 36; also Brunner, *RG.*, ii, 59, note 10, and my remarks in *Mitteil. d. Instit.*, xxxvi, 11 (1915).
[5] Cf. above, 100 f.
[6] Ibid., 127 f.
[7] Loening, op. cit., ii, 665.
[8] *Sitz.-Ber. d. Berliner Akad.*, (1885), 1182 ff.
[9] Cf. also my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, 1², 238.

the Franks. We must not allow ourselves to be deceived by the outward appearance of the documents which we possess. The Bavarian charters show that the so-called *autotraditiones* were concerned chiefly with priests and clergy.[1] But even among the Franks these could only be made with the king's consent.[2] Further, we know that the first Carolingians decreed that land which owed "census" to the king could not be alienated or, if it had been, must be restored to the heirs,[3] i.e. the king's permission was necessary. This claim may be traced to Merovingian times, and is found as early as Marculf's charters.[4] In this connection it is perhaps possible to suggest an explanation of the king's claim to a certain control over divisions of inherited property among freemen (*divisio de alode*).[5] The fiscus probably had a general interest in controlling such divisions of property, because they would considerably facilitate transferences to the Church in consequence of the right of subdivision (*Freiteilsrecht*).[6] At any rate, there is documentary evidence from the Carolingian period that at times the Church too demanded a tithe of the inheritance.[7] There also an opportunity presented itself for diminishing the disbursements previously made to the state.[8]

Finally, the Frankish king also had to give consent to alienations by *tributarii* on royal estates.[9] These may be considered the equivalent of the *homines potestatem de se non habentes* in Bavaria.

Thus among the Franks, too, the government had brought under its control the transference of land to the Church. It was not that it was opposed to such gifts on principle; indeed, the Church, as we see from many of the folk-laws, obtained favours and mitigations in this very matter. We have already spoken of the Bavarian law;[10] and the same situation may be seen just as clearly in the *Lex Alamannorum*.[11] On the other hand, the *Lex Saxonum* in the passage which secures the right of pre-emption to relatives in cases of alienation of property makes a special exception of grants to the king or to the Church.[12] This favouritism must often have given rise to abuses and must have hastened the time when the state would have to limit it.

The legal position of the monarchy in respect of the Councils, whereby the Frankish king both summoned them and gave consent and confirmation to their decisions, has also been explained by some scholars, notably by v. Schubert, as a result of Aryanism.[13] According to this theory the decisive factors in the situation were economic and social, viz. the migratory life and the nature of settlement. But, as a matter of fact, the German settlement did not proceed in agglomerations as compact as v. Schubert assumed them to be, least of all in the three states which he specially mentions, Italy, Spain, and Burgundy. It is only necessary to remind the reader of the division of land with the Romans, which from the beginning was

[1] Cf. ibid., ii², 8 ff.
[2] See above, 272 f.
[3] Cf. the *Capitulare de iustitiis faciendis* of 811–13. *MG.*, Capit. 1, 177, c. 11; also my *Wirtschaftsentwicklung der Karolingerzeit*, ii², 351.
[4] Cf. *Form.*, i, 19; *MG. FF.*, 56.
[5] Cf. *Form. Marculf.*, i, 20, op. cit.
[6] See above, 255 f.
[7] Cf. the records of 879 in *St. Gall. UB.*, ii, 388.
[8] *Histor. Franc.*, x, 7; op. cit., 1, 414.
[9] Cf. the *Capitulare* of 818–19, c. 2. *MG.*, Capit. 1, 287.
[10] See above, 273.
[11] Cf. Tit. i, *MG. LL.*, iii, 45.
[12] *Lex Saxonum*, c. 62: *MG. LL.*, 5, 79.
[13] *Das älteste Germanische Christentum*, 22 f., and German edit., ii², 275 f.

responsible for a considerable mixing of the two nations.[1] Above all, it is incorrect to think of a solid mass of Germans inhabiting the open country, while the Romans concentrated in the towns. This assumption, which is not borne out by the sources, is the chief basis for the theory that the tribal Church developed into a national one. No one will deny that in the fifth and sixth centuries, when the German states were being founded on Roman soil, and even afterwards, the tribal constitution was extremely important. That is sufficiently proved by the folk-laws, which were promulgated in these new kingdoms. Moreover, we may take it for granted that the development of separate tribal states must have had a certain reaction on the legal position of the Church within their boundaries, more especially as that Church had gained rights which had to be recognized by the state government. It will suffice to mention only one of these, the great landed property acquired by the Church, with all the rights attached thereto, such as *immunitas*, judicial power, freedom from taxation and tolls, etc. No doubt, also economic inequalities and differences in the composition of the population caused different developments in the various states.

When, therefore, a single monarchy developed in these tribal states, the king and the bishops, because of their important position in town and country, found it to their advantage to take counsel together. This was merely the natural consequences of the authority which both had acquired, and of their close connection with one another; and it was also the necessary preliminary to any organized system of government in the new Germanic states.[2] Clovis was not taking a new step when he summoned the bishops to these common councils, but was merely continuing the practice of the Roman Emperors within his own sphere of influence.[3]

In this matter also, no Aryan model was necessary. It should be noted that one of the best authorities on early Germanic ecclesiastical law went so far as to urge that "we cannot speak of a Visigothic or Burgundian national Church, even though the bishops met there in council and, at any rate, in the Visigothic kingdom, had to have the king's permission to do so."[4]

In Italy, moreover, where according to Schubert's theory the Lombard king ought very decidely to have had this right, we hear nothing of it; on the contrary, it was the Pope who summoned the councils in which the Lombard bishops took part (e.g. 649, 680); King Liutprand, although his royal power was considerable,[5] incorporated their decrees in his laws.[6]

The Merovingian kings were the first to create a national Church, in so far as, on the one hand, they formed various ecclesiastical groups into a single whole within the boundaries of the Frankish kingdom and, on the other, prevented any non-Frankish ecclesiastical organization from exerting a direct influence on Church affairs within their kingdoms.[7] This constituted a fundamental difference from the conditions prevailing among the Visigoths, Burgundians, and Italians. In the former case the metropolitan see, where it extended beyond the boundary of the country, was not affected by the formation of the new states, but in the latter case,

[1] See above, 93 ff.

[2] Cf. also the remarks of A. Hauck, *KG.*, 1^{8}, 162=1^{4}, 164. He regards the form of the synodal system in the Frankish kingdom as a living expression of the co-operation of Church and state.

[3] Loening, op. cit., ii, 129.

[4] Hegel, *Städteverfassung*, 373, and Hartmann, *Gesch. Italiens*, ii, 1, 224 f., 258.

[5] See Germ. edit., ii^{2}, 16, and 121.

[6] Tamassia, op. cit., 172; Hartmann, op. cit., ii, 2, 129 ff.

[7] Loening, op. cit., ii, 130.

after King Theudebert's conquest of Northern Italy and Pannonia, it was extended to include bishoprics which had hitherto belonged to Aquileia (Aguntum, Tiburnia, Virunum).[1] The extensions of the state boundary thus caused an extension of the ecclesiastical sees, which disappeared again as soon as these conquests were lost. Thus Chur was lost from the metropolitan see with Milan.[2] The same tendency to form a national Church may be noticed when a new Frankish bishopric was founded in Maurienne at the end of the sixth century, when the alpine districts were handed over by the Lombards to King Guntchram and were detached from the diocese of Turin[3]; and again, when the bishoprics of Uzès and Toulouse were detached from the see of Narbonne and handed over to that of Arles.[4]

These changes show that the decisive factor in the formation of a national Church was not membership of a particular nation or tribe, but the growth in the political power of the Frankish state. The Frankish national Church was not national in the "folk" sense, and therefore the term "national councils"[5] is not an adequate expression for the assemblies of the bishops of the whole state. These were state councils, as compared with the provincial synods in each subdivision of the kingdom[6]; and these state synods represented the Frankish national Church. They ought not to be described merely as "a result of the Franks' strongly developed political particularism".[7] Possibly the process was also influenced by the ecclesiastical contrast with the neighbouring states, which were all Aryan, a contrast which Clovis would make it his business to intensify, in accordance with the general tenour of his internal policy.[8] This would explain why the Frankish kings could, without opposition from the hierarchy, treat their kingdom as one ecclesiastical body, even though it was not so in fact.

The Frankish kings summoned these councils and definitely influenced their work. Schubert thinks that this was an after-effect of Aryanism, but various arguments have been raised against this view. First, where one would expect to find this influence the synods were summoned not by the king, but by the metropolitan bishop in the Burgundian kingdom.[9] Moreover, the extent to which the Frankish king exercised this privilege has been exaggerated. We know that the first Council of Orleans (511) was called by Clovis who suggested the subjects for discussion, and later decrees also mention that the king had summoned the councils. But does this really show that these councils could assemble only at the king's command? Decrees do also exist in which the royal summons is not expressly mentioned. The command of King Sigibert III (*c.* 644), that in future no council should meet in his kingdom without his consent,[10] shows that such cases must often have occurred previously.[11]

This reading of the situation is also supported by the fact that the royal assent was not essential for the validity of the council's decrees.[12] If state councils could be summoned only by the king and if he always prescribed their work,[13] we

[1] Cf. Loening, op. cit., ii, 112 ff., esp. J. Friedrich, "Die ecclesia Augustana i. d. Schreiben strisch. Bischöfe," *Sitz.-Ber. d. Münchener Akad.*, 1906, 327 ff., and R. Egger, in *Sonderschriften des Österr. Archäolog. Instit.*, ix (1916).

[2] Cf. Loening, ii, 111 f.

[3] Ibid., 119 f., and Hauck, *KG.*, 1^3, 154, 412=1^4, 157, 428.

[4] Loening, op. cit., ii, 121 f.

[5] Loening, op. cit., ii, 135, and Hinschius, *KR.*, iii, 539 f.

[6] Cf. Loening, ii, 134, on these.

[7] Hauck, *KG.*, 1^3, 163=1^4, 166.

[8] See above, 263.

[9] Hinschius, *KR.*, iii, 539, note 4.

[10] *MG. Epp.*, iii, 212 (*c.* 644).

[11] Cf. also Hauck, *KG.*, 1^4, 165.

[12] Cf. Loening, op. cit., ii, 150, and Hinschius, *KR.*, iii, 542.

[13] Loening, op. cit., ii, 149.

should expect that deliberations so strongly influenced by the state would have needed its assent. Moreover, there is in this no real deviation from the Roman point of view [1] for in Roman times only the decrees of the œcumenical councils were confirmed by the emperors, thus becoming laws of the state. There is no question of any confirmation in the case of other councils.[2] Here, again, an important difference between Frankish and Visigothic conditions is apparent, for in the latter case all decrees of the councils, even the purely ecclesiastical ones, needed the royal assent.[3]

Clovis, and the Merovingian kings after him, continued the old practice of the Roman period, whereby the Church managed her own internal affairs without being forced to seek the assent of the state. They could afford to do this, because the bishops were more closely attached to the king and more subordinate to him than were the bishops in Spain.[4]

Clovis did not copy his system from a ready-made pattern, but carefully and wisely weighed the particular conditions of his people, who were mainly provincials, and therefore preserved Gallo-Romano arrangements as far as possible, adapting them to the new political needs. This is very clearly seen in the most significant feature of the Frankish Church, i.e. its isolation from the Roman Papacy. All relations with the latter did not, however, cease; on occasion Clovis showed his respect for the moral authority of the Pope of Rome.[5] The older theory, that immediately after his conversion the Pope effected direct alliance with him, is incorrect, as the letters of Anastasius II to Clovis [6] have been proved to be spurious.[7] They came into touch with one another, because this was unavoidable at a time when the Frankish rule was spreading over Burgundy and Southern Gaul, which were closely allied to Rome.[8] Here also the conservative principles of Frankish ecclesiastical and state policy were observed; the king did not disturb existing conditions (583), but recognized the Archbishop of Vienne as the Pope's Vicar just as Clovis had previously recognized the Papal authority. But he allowed that Vicar as little actual influence over the Frankish Church as Clovis himself allowed the Pope. The fact that at times there was no Vicar, shows how little real power he had,[9] and it is important to note that the Frankish episcopate seems to have completely approved of this state of affairs, or at least made no attempt to give any scope to the Papal influence. Although believers made pilgrimages to the graves of the apostles in Rome, and brought back relics, and although monasteries begged the Pope to grant them privileges, these came into effect only if the king gave them his support.[10] Even such a vigorous and otherwise successful Pope as Gregory the Great could not alter this fact. Although he had good reason for his efforts to abolish simony among the Franks, he was not in a position to remove the abuses [11]; and his warnings to Queen Brunhild, with whom he

[1] L. v. Schubert, *Gesch. d. christl. Kirche im Frühmittelalter*, 162 (1917–1921).
[2] Cf. Loening, op. cit., ii, 154, note 3.
[3] Loening, op. cit., ii, 155; also Hinschius, *KR.*, iii, 543.
[4] Council of Mâcon (585). *MG.*, Concil., i, 164.
[5] Cf. his letter to the Frankish bishops whom he describes at the end as "domini sancti et apostolica sede dignissimi papae" (*MG.*, Capit. i, 1).
[6] Jaffé-Wattenbach, *Reg. Pontif. Rom.*, i, No. 745.
[7] Cf. J. Havet, "Questions Mérovingiennes," ii, *Bibl. de l'École des Chartres*, xlvi, 205 ff., esp. 258 f. (1885); *Œuvres*, i, 69 ff. (1896).
[8] Cf. Hauck, *KG.*, 1^4, 420 ff.
[9] Hauck, 407 = 1^4, 423.
[10] See the letter of Gregory the Great to Brunhild, quoted by Hauck, *KG.*, 1^4, 425, note 4.
[11] Cf. Hauck, *KG.*, 1^4, 426 ff.

apparently tried to keep up a correspondence, had little practical result. If he wished to achieve anything, he could do it only through the king. But very often he seems to have preached to deaf ears, or at least to have met with a very dilatory response to his recommendations.[1]

This development of the Frankish Church has been described as "freedom from Rome".[2] But it would be incorrect to explain it merely as the result of the strength of the monarchy, for this was definitely diminishing at the time and for other reasons besides the partition of the kingdom.[3] The complete cessation of intercourse between the Frankish Church and the Papacy exactly coincides with the famous Edict of Clothar II (614), i.e. with the great rise to power of the Frankish aristocracy. Aristocracy and episcopate were at that time allied by their common interests. These were chiefly economic, owing to the enormous increase of great seigneurial estates. But they were also political, for these great men were endeavouring to extend their power at the expense of the monarchy, which was again and again dependent on their support in the disintegrating quarrels for the throne, and was, therefore, forced to make political concessions to them. Clothar's Edict was to some extent the complement of those events which we can already see clearly in the Treaty of Andelot (587).[4] This treaty chiefly guaranteed the power of the bishops, though it also guaranteed that of the lay aristocracy. At that time there was a growing tendency for laymen to become bishops in the Frankish kingdom; and we can see how much alike were their political aims. The Roman Papacy energetically opposed this simony and tried to induce the king to get rid of the prevalent laxity and confusion. The powerful Frankish aristocracy knew what to expect from Rome. Why should they desire a change in conditions which suited them so well? It was obviously they who frustrated the Pope and prevented him from intervening in Frankish ecclesiastical affairs. It was certainly no accident that just at that time the Frankish Church ceased all intercourse with Rome. But this cannot be regarded as part of a great political programme planned by the Frankish monarchy and designed to break off systematically all relations with Rome; rather, it was the outward expression of the internal condition of affairs, which the king was powerless to alter.

The best proof that this was so may be seen in the change which took place during the eighth century. From the standpoint of canon law the Frankish Church was in process of dissolution at the beginning of that century, and it is not surprising that the "Rome free" Church could not prevent this "decline". It would have been much more surprising if it had. During the eighth century Rome once more got into touch with the Frankish Church. This important fact has often been attributed to the expansion of the Anglo-Saxon missionary movement; but it was certainly not the main reason. The Anglo-Saxon mission, which was closely connected with Rome, was at work on the continent as early as the end of the seventh century; and yet Rome had no perceptible influence among the Franks under Charles Martel. Boniface, when he returned from Rome in 720 to devote himself to missionary work in Hessen and Thuringia, met with a very cool reception at the Frankish court.[5] The Pope's letters of recommendation had no effect. Behind Charles there apparently stood the Frankish episcopate which

[1] See the various cases collected by Hauck, *KG.*, 1^4, 427 ff.
[2] Hauck, op. cit., 1^4, 429.
[3] See above, 168.
[4] See above, 202 f.
[5] Cf. Hauck, 1^4, 469.

watched the activities of Boniface with distrust.[1] However successful he might be in Middle Germany, in Thuringia, Hessen, and East Franconia, he gained no influence over the main Frankish Church. This is all the more significant because elsewhere in Bavaria the Papacy was very successful just then; in 716 Duke Theodo had already made contact with Rome.

The great change came about after the death of Charles Martel (d. 741) when his son, Carleman, who had grown up in the monastery of St. Denis, took upon himself the reform of the Frankish Church. This was begun by the first German synod summoned by him in the absence of the Frankish episcopate.[2] The period which closes with the reforming synods of the mayors of the palace, Carleman and Pippin (Soissons 744), was a time of significant developments in more ways than one. Hauck attributed the fact that Rome once more came into contact with the Frankish state to the work of Charles Martel's sons, Carleman and Pippin.[3] But there were deeper causes. This period (644–743) has lately been described as the time during which the right of private church-ownership (*Eigenkirchenrecht*) gained complete ascendance among the Franks.[4] Now the growing predominance of this system is undoubtedly connected with the growth of great "manorial" estates in the Frankish kingdom. Ecclesiastical and secular landowners (as in the late Roman period) had acquired exemption from public authority (*immunitas*) for their estates.[5] Therefore the more political influence the aristocracy acquired at the expense of the monarchy during the civil wars at the end of the sixth century, the more they strengthened their independence. In the Edict of Clothar (614), the *Magna Carta libertatum* of the Frankish aristocracy, their important position was legally and formally recognized by the king.[6] These rights of immunity were then developed in different ways. First the seigneurial jurisdiction of Roman origin became merged in them. The Edict of Clothar II shows clearly (c. 14) that the possessor of an immunity, like the old Roman *assertor pacis*, was commissioned by the state to guard the peace.[7] This edict also recognizes the jurisdiction of the great ecclesiastical and secular landowners over their own people, except in criminal cases (c. 15).

As in the late Roman period of the fourth and fifth centuries, many less important freemen came under the *patrocinium* of the *potentes* and were turned into dependent peasants on these territorial lordships,[8] so also the same thing happened now among the Franks and the Visigoths. Even though the legal status of the German territorial lordship differed in its orign from the peculiar type of jurisdiction which survived from Roman times on the estates of certain churches and great territorial lords, nevertheless in both cases the admission into *patrocinium* (*munt*, *mundeburdium*) had the same effect[9]; it brought about a personal dependence of the protégé on the protector which found expression in the representation of the former by the latter before public justice.

Now it is significant that at the very time at which the Frankish bishops in the seventh century synods were opposing the right of private church-ownership

[1] See Liudger's *Vita Gregorii abbat.* *MG. SS.*, xv, 70; and Pope Gregory II's letter of 726. *MG. Epp.*, iii, 277, note 26.
[2] Cf. Hauck, *KG.*, 1^4, 520 ff.
[3] *KG.*, 1^3, 414 = 1^4, 430.
[4] U. Stutz, *Gesch. d. Benefiz.-Wes.*, 137, and German edit., ii^2, 286.
[5] Cf. above, 136 f. and especially Kroell, *L'Immunité franque* (1910).
[6] See above, 199 f.
[7] Cf. Brunner, *RG.*, ii, 286, note 50.
[8] See above, 156 f.
[9] Brunner, *RG.*, ii, 285.

they were also objecting to the fact that clergy were being admitted to the patronage of the great lay nobles.[1] It should be noted, moreover, that in the decrees of the Council of Chalons this prohibition follows immediately on regulations directed against the private churches. The close connection of the two movements is thus obvious.[2] The process can be traced even earlier. The Council of Eauze (Gascony) [3] of 551 attacks the *patrocinium* of laymen, and refers to earlier decrees of the Councils of Orange and Arles (*c.* 442–506).[4] The fact that it is the Church in Southern France which attacks this system as early as the middle of the fifth century is in keeping with the well-known and often-quoted statements of Bishop Salvianus of Marseilles concerning the admission of small free peasants into the *patrocinium* of great territorial lords.[5] In that district the after-effects of late Roman conditions were especially strong. But the German *patrocinium* (*mundeburd*) led to the same result. What we have here is a fusion of Roman and German legal principles, which have undergone a peculiar development owing to the Church itself. The Council of Bordeaux actually uses the German term *mundeburdo* where the Council of Chalons speaks of *patrocinium*. Just as the Church united Roman and Germanic believers within herself, and was the representative of a continuous development from Roman times onwards, so here, too, she carried on the old tradition and adapted it to the new Germanic conditions.

This is very clearly seen in that protective relationship which later became so important, and is known as the *Vogtei*. The inhabitants of districts under an immunity were represented before public justice by *agentes ecclesie* or *advocati* or *defensores*.[6] This is not a purely Germanic system, but occurs in the late Roman period. In the Visigothic territory, where Roman influences were especially strong, we find the term *assertores* used for the *Vögte*. The view that the *Vogtei* was not generally found until Carolingian times is incorrect; it was universal in the Merovingian period.[7] After the account given above of the growth of power among the lay nobility,[8] it can come as no surprise that great laymen, especially counts and royal *ministeriales*, should have represented the Church in this way. Their *Vogtei* secured for them not merely an actual influence over the churches which they protected, but also economic advantages. Thus it is comprehensible that even at this early date there were loud complaints of the occasional oppression of *Vögte*.[9]

This, however, is only one aspect of the general results of *patrocinium*. The protector not only represented his protégé but had the right of disposal of his land. Even in the fourth century there were numerous villages (*vici*), which were under the *patrocinium* of great lords, and were thus admitted into the circle of the great territorial lordships.[10] If clergy entered into such a relationship, the lord on whose land a private church had been erected demanded control over this church

[1] Cf. the Council of Chalons (639–654), c. 15. *MG.*, Concil., I, 211. Similarly also the Council of Bordeaux (663–675), c. 2; ibid., i, 215.

[2] In the decrees of the Council of Bordeaux clergy are forbidden to wear secular clothes or weapons.

[3] c. 4, *MG.*, Concil., I, 114.

[4] See the remarks of F. Maassens in *MG.*, Concil., I, 114, note 6.

[5] See above, 90 f.; and P. Roth, *Feudalität und Untertanverband*, 285 f.

[6] Cf. Brunner, *RG.*, ii, 303 ff.

[7] See Loening, ii, 534, note 4. Examples from Merovingian sources are also given.

[8] See above, 199 f.

[9] It is significant that this occurs in the Edict of Clothar II (1614), cf. c. 20: *MG.*, Capit. I, 23.

[10] Cf. Zulueta, *De patrociniis vicorum* in Vinogradoff's *Oxford Studies in Social and Legal History*, i, 2, 19 (1909).

also, and over the pious gifts which fell to its lot. This meant that they were withdrawn from the direct jurisdiction of their ecclesiastical superior, the bishop, and it can easily be understood why the Councils opposed the admission of the clergy into the *patrocinium* of both king and nobility.[1]

But the position appears most clearly in the earliest letters of protection granted by the first Carolingians. These combine royal protection with the monastic right of election,[2] which made it possible for the monasteries to become independent of the bishops. This must not, however, be interpreted as indicating a movement against the bishops, for the right of free election of the abbot was intended as a protection against encroachments by the kings as well as the bishops.[3] Nor is this all that can be said on the subject. The line of development should be considered. The elective privileges were first granted by the bishops; towards the middle of the seventh century they became more frequent.[4] At that time most of the Frankish bishoprics fell into the hands of very wordly men, who were not interested in their dioceses and were notorious for their greed and violence.[5] Church property had been largely appropriated by lay nobles,[6] who had made use of the *patrocinium* to acquire it.[7] Thus there is a clear connection between this behaviour on the part of the lay aristocracy and the monastic privileges, which were granted so frequently during the seventh century. It has not been realized that among the formularies of that period are to be found documents emanating from the founders of private monasteries. It is highly significant that it should have been necessary for monasteries of this sort to obtain a special guarantee for the security of their property and for freedom to elect their own abbot.[8] In close connection with this charter we find another which has the king's assent. This was required because, on the death of a bishop, laymen often took over ecclesiastical control, and wasted the Church property on wordly aims.[9] Obviously after the death of the founder of a private monastery, his family might lay claim to the lands which had been given to the monastery from their alod, a frequent occurrence later, in Carolingian times.[10] It must also be remembered that royal confirmation of monastic ownership of property was being more and more frequently sought at this time, and often appears in the charters in close association with the privileges.[11]

Thus it is plain that in the seventh century the lay aristocracy, whose political power was rapidly growing, made a vigorous attack on the vast accumulation of ecclesiastical property. It was the *ministerium regis* especially which enabled them to do so, and it is not to be wondered at that the great mayors of the palace (an office which is itself an example of this growth of the lay aristocracy) busied themselves with the appropriation of Church property on a large scale. Ebroin and Charles Martel were especially active in this direction, and they were merely following the example so successfully set by the lay powers during the previous century.

[1] Cf., e.g., the Council of Paris, *MG.*, Concil., 1,187, c. 5.
[2] Cf. Th. Sickel, "Beitr. z. Diplomatik," iii, *Sitz.-Ber., d. Wiener Akad.*, xlvii, 190.
[3] Ibid., 570. [4] Op. cit., 568.
[5] Ibid., 566, and Hauck, 1[4], 390 ff., esp. 400.
[6] Cf. the decrees against it at the Council of Chalons (639–654), c. v, vi, *MG.*, Concil., 1, 209.
[7] This is seen already in the attitude of the Fourth Council of Orleans (541): cf. c. 25.
[8] Cf. *Collect Flaviniac.*, No. 43, *MG. FF.*, 480, taken from a document of 719.
[9] Ibid., 481, No. 44.
[10] Cf. my *Wirtschaftsentwicklung der Karolingerzeit*, 1[2], 237.
[11] Cf. *Form. Marculf.*, i, No. 31, and esp. No. 35, *MG. FF.*, 62, 65. For the Carolingian period see my *Wirtschaftsentwicklung*, 1[2], 238 f.

Seen in this light, the secularization of ecclesiastical property in the eighth century appears to be not so much the assertion by the state of a claim to use it for public purposes as a direct consequence of the previous economic and social development. When the control of the government fell into their hands, the mayors of the palace, by virtue of the ministerial office, applied a private legal right, the right of private church-ownership, to public affairs. This was only one aspect of the closely associated process, which was going on meanwhile in the Germanic states and which must now be discussed, namely the rise of feudalism.

CHAPTER IX

THE RISE OF FEUDALISM

NO branch of the history of European civilization so strikingly reveals the remarkable progress of modern scholarship as does the history of feudalism. Indeed, during the nineteenth century feudalism for a considerable time became the study *par excellence* of legal and constitutional historians, since it was rightly seen to be of fundamental importance for the elucidation of medieval conditions. After the great conflict between the earlier French theory, which tended to regard it as a derivation from Roman conditions (the *beneficia militaria* of Imperial times) [1] and the German theory, which sought its derivation in the "following",[2] had to some extent died down, G. Waitz [3] and P. Roth [4] worked out on the basis of the latter their important conclusions as to the essential nature of feudalism and the period of its growth. For some time after the publication of Brunner's researches, which were based on their results, the question was considered to have been finally settled. His work on the Merovingian land grants proved that Waitz was right in considering that *beneficia* already existed at that time.[5] In his equally famous second treatise *Der Reiterdienst und die Anfänge des Lehenswesens* [6] he made it clear that he considered that the chief cause of the fusion of two hitherto separate legal institutions, *vassalitium* and *beneficium*, was the reorganization of the Frankish army necessitated by Charles Martel's war against the Saracens. The Frankish leader obtained the heavy cavalry required by means of investitures, which gave a man the necessary economic qualification for this service by giving him the right to the fief—a right which was limited to his own person and to the duration of the service.

Brunner's work made one great contribution to the subject by throwing light on its legal aspects. It is easy to understand why it has been so well received up to the present day and has been copied by later writers, on the whole, without adverse criticism, as a final solution of this vexed problem. Even at the present time it has not been definitely rejected, though some objections to it have been raised. True, it must be pointed out to-day that one of the basic assumptions of this theory is completely incorrect, i.e. the supposed reorganization of the Frankish army under Charles Martel. For Brunner's main assumption, that up to then the German peoples, especially the Franks, had had no heavy cavalry and that their armies had chiefly consisted of infantry, is definitely wrong. A number of documents prove that the German tribes, especially the Franks, had many and excellent horsemen in the first centuries A.D.[7] It is only necessary to refer to Tacitus'

[1] See Dubos, *Histoire critique de l'établissement de la monarchie française*, vi, 13 (1742); Garnier, *Traité de l'origine du gouvernement français*, xi, 6 (1765); Perréciot, *De l'état civil des personnes*, ii, 252 (1845), etc.

[2] See Eichhorn, *DRG.*, i, § 167; Phillips, *RG.*, i, 507.

[3] *DVG.*, vol. 2, and "Uber die Anfänge der Vasallität," 1856.

[4] *Gesch. des Beneficialwesens*, 1850, and *Feudalität u. Untertanenverband* (1863).

[5] *Sitzungsber. d. Berliner Akad.*, 1885.

[6] *Zeitschr. d. Savigny-Stiftung, f. RG.*, 8 (1887).

[7] M. Delbrück, *Gesch. d. Kriegskunst*, ii², 422 f.=ii³, 432 ff. (1921). Also M. Heyne, *Deutsche Hausaltertümer*, ii, 168 f. (1901).

remark in his *Germania* that the lord frequently made the gift of a war-horse (*bellatorem equum*) to his *comitatus* for purposes of military equipment.[1] In the sixth century the Franks not only had mounted soldiers but also a troop of heavy cavalry, as is shown by Gregory of Tours' account of the campaign in which Thuringia was conquered (531),[2] the campaign in Brittany in 530,[3] and other smaller military enterprises.[4] When Einhard praises Charlemagne for riding so persistently, he points out that to such an extent has this practice been a national custom among the Franks that no other nation could compare with them.[5]

Moreover, Brunner paid far too little attention to earlier developments. He passes quickly [6] over the wars with the Avars, which must have been frequent in the sixth century, describing them simply as invasions of the eastern frontier and short campaigns, and says that the Frankish leaders were able to bribe the invaders to withdraw peacefully by payments of money. But this leaves quite unexplained the expansionist policy of King Theudebert, who, in a well-known letter to the Emperor Justinian (534–547),[7] boasted that he had extended his kingdom to Pannonia. Shortly before this Thuringia was devasted by the Franks, and we have already seen that they used mounted soldiers in this war. Moreover, at this time and also under Clothar I (d. 561) the Franks fought and conquered the Saxons and Jutes, tribes from lower Germany who are known to have had plenty of horsemen.[8] It should also be noted that some sources which were considered to prove the preponderance of cavalry in Carolingian times,[9] because they showed that Charles the Great levied only or chiefly horsemen, really refer to the Frisians and to the north of France, where both then and earlier horse-breeding was extensively carried on.[10] Nor, finally, must it be forgotten that the Alemanni, against whom the Franks under Clovis had so often to fight, were also famous as riders.[11]

Thus, for several centuries before Charles Martel, and indeed from the earliest times, the motive which is believed to have led to the formation of cavalry was already present. It can, moreover, be shown in detail that Brunner's second argument, that the Franks could wage war successfully against the Saracens only by means of a strong cavalry, is equally incorrect. Roloff challenged these arguments on general technical and historical grounds, supporting his own view with examples drawn from the ancient Greeks and the Swiss, whose successes in battle afford a striking proof of the fact that infantry are well able to hold their own against great troops of cavalry. Moreover, evidence to the same effect may be drawn from our historical sources themselves.[12] It has already been pointed out that in Aquitaine there were a large number of horse-soldiers even under the Visigoths,[13] and one source makes it clear that the neglect of their infantry was the

[1] c. 14.
[2] *Histor. Francor.*, iii, c. 7.
[3] Ibid., x, c. 9. Also Waitz, *VG.*, ii, 2[2], 211, note 3, and above, 219 f.
[4] Ibid., iv, 30 (c. 568); vii, 35 (c. 585).
[5] *Vita Karoli M.*, c. 22.
[6] Op. cit., 22.
[7] *MG. Epp.*, iii, 133, No. 20; also W. Schultze, op. cit., 119 f.
[8] Cf. Brunner himself, op. cit., 5.
[9] Brunner, op. cit., 11, 27.
[10] See above, 130 f.
[11] Cf. Delbrück, op. cit., ii[2], 432 f.
[12] "Die Umwandlung der fränkischen Heere von Chlodwig bis Karl d. Gr." *Neue Jhb. f. d. klass. Altertum, Gesch. u. deutsche Lit. v. Ilberg*, v. Jahrg., ix, 390 ff. (1902).
[13] Cf. Dahn, *Könige*, vi[2], 215. Also Delbrück, op. cit., ii[2], 423=ii[3], 433, and L. Schmidt, *Gesch. d. deutschen Stämme*, ii, 299, note 1.

very reason why the Aquitanians could not conquer the Saracens in battle; they were so effeminate that they avoided fighting on foot.[1] It has also been pointed out that in Southern Gaul and Spain the army had been riding on horseback not only from the time of the Saracens, but from the earliest times, and they went on doing so later in Aquitaine as well.[2] The soldiers in the south had been on horseback and usually in armour from Roman times, but it is unlikely that the northern soldiers would have been used regularly in the sporadic affrays with the Saracens.[3] We must no longer exaggerate the importance of the battle of Poitiers; the most recent historical research rightly holds that "to attribute to this victory the rescue of Christianity and of Christian German civilization in Europe is to overestimate its importance". The offensive power of Islam in the West had already passed its zenith. Civil wars among Mohommed's followers, involving tribal and religious controversies, hindered its further advance far more than any one battle could have done.[4]

Furthermore, Brunner's positive evidence to show that the Frankish army was completely reorganized under Charles Martel is not convincing. Against his argument that the armies of Charles the Great cannot have been mainly composed of foot soldiers, because the poor condition of the military roads would have greatly impeded the movement of large masses of infantry from one end of the kingdom to the other, it must be pointed out that there is no reason to believe that cavalry would have found the bad roads any easier than infantry. On the contrary, there is no doubt that a foot-soldier was much better able to traverse woods, marshes, rivers, and narrow passes, and to clear away obstacles.[5] The same reasons might have caused a reorganization of the army even under King Theudebert (534–548), since he fought not only in Pannonia and Thuringia but also against the Saxons and Jutes.[6] Why should this great army reform have taken place for the first time in the eighth century? Brunner established the correctness of Waitz's assumption that *beneficia* already existed under the Merovingians, and that at that time lands were already being distributed among vassals in return for special services. But he did not go on to draw the logical conclusion from his own observations, because he clung to Roth's theory that the reorganization of the army took place in the time of Charles Martel, merely adding to it the point about the Saracens. The whole discussion of this important problem still continued along the lines laid down by Roth. Brunner also thought that the cavalry-army of late Carolingian times had its origin primarily in vassalage. Actually the only thing one can say with certainty is that there was an expansion of feudalism in the eighth and ninth centuries, but each of the hypotheses by which it is explained needs independent proof. First, did the Carolingian armies really consist mainly of cavalry? And, secondly, did the late Carolingian cavalry troops really consist mainly of vassals?

These are questions which have recently been subjected to a detailed examination by experts. On the one hand, W. Erben thinks that Delbrück's assumption that Carolingian soldiers "were mainly cavalry" is uncertain, and that it is

[1] Cf. Dahn, op. cit., vi², 216, note 4.
[2] E. Mayer, "Die Entstehung der Vasallität und des Lehenwesens," *Festgabe f. R. Sohm* (1914), 46 f.
[3] Ibid., 66.
[4] Cf. W. Levison, *Gebhardts Handb. der deutschen. Gesch.* (6th edit., 1922), 195.
[5] Roloff, op. cit.
[6] See his letter to Emperor Justinian, quoted above, 284.

probable that most of them were infantry.[1] The sources make it clear that the weapons which were generally required, the shield, the lance, and the bow and arrows, were such as even the poor peasant could provide.[2] The *capitularies* of the beginning of the ninth century, moreover, definitely disprove the theory of Brunner and Delbrück. These laws forbid a soldier to take only a club on a campaign and decree that everyone must have a bow. This makes it evident that free infantry had not entirely disappeared in the eighth century.[3] Other documentary evidence (adduced by H. Fehr) shows that the poorer peasants were constantly called up for military service, while the richer men stayed at home.[4] We also learn that the levies of the time cannot have been "composed mainly of vassals". Charles the Great certainly called up his free peasants, even in the later years of his reign,[5] and the army referred to in the Carolingian *capitularies* is essentially a folk army.[6] A particularly interesting piece of evidence may also be mentioned, all the more significant because it belongs to the late Carolingian period. The Monk of St. Gall gives us a vivid description of the great army led by Charles over the Alps against the Lombard king. In one passage he definitely calls it *exercitus popularium de latissimo imperio congregatum*, and when he speaks of its rich armour, he makes it clear that the horsemen were in the minority.[7]

Thus both bases of Brunner's theory are incorrect. Moreover, it must be emphasized that levies of vassals occurred long before Carolingian times, and must have been frequent even in the second half of the sixth century. The Edict of Clothar (641) leaves no doubt that in the civil wars which ended with the death of Brunhild (613), the decisive part was played by the vassals.[8] Troops of this type are not mentioned for the first time in sources of the mid-seventh century; both *a priori* reasons and also the Edict of Paris (614) would lead us to believe that they existed long before that.[9] As a matter of fact we may conclude that there were large numbers of them, even after the well-known treaty of Andelot (587).[10]

Delbrück holds that at Tours and Poitiers the battle was won by vassal armies.[11] Therefore the Arab wars were not the main cause of that reform of the army which was thought by Brunner to be the origin of feudalism. When the Carolingians built up their power by means of their "following", they were acting in just the same way as the other Frankish nobles in Merovingian times, who gathered armed bands of warriors round them at a time when the royal power was declining and the state in confusion.[12]

The origin of feudalism really goes back very much farther; and recent research has thrown much light on this subject. We know to-day that even in late Roman times there were private mounted soldiers, the so-called *bucellarii*.[13] They were personally bound to their lord by an oath of fealty, and were supported,

[1] "Zur. Gesch. d. karoling. Heerwesens." *Histor. Zeitschr.*, 101, 324 (1908).
[2] Cf. the Capit. Aquisgran. (a. 801–813). *MG.*, Capit. 1, 172, c. 17.
[3] Roloff, op. cit., 399; see also my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, ii², 22, note 4 (1922).
[4] "Das Waffenrecht der Bauern im Mittelalter." *Zeitschr. f. RG.*, xxxv, 118 (1914).
[5] Erben, op. cit., 333.
[6] Fehr, op. cit.
[7] *Gesta Karoli M.*, ii, c. 17; *MG., SS.*, ii, 759.
[8] Cf. Delbrück, op. cit., ii², 458.
[9] Ibid., ii², 455.
[10] See the discussion above, 200.
[11] Op. cit., ii², 460, 470 = ii³, 471, 481, and his *Histor. u. polit. Aufsätze*, 126.
[12] Dippe, *Gefolgschaft und Huldigung im Reiche der Merowinger* (1889), 11 f., esp. 25.
[13] Cf. C. Beniamin, *De Justiniani imp. aetate quaestiones militares.* Berlin, Diss., 1892, 23.

equipped, and provided with horses by him.[1] They also received land from him (*fundi militares*).[2] They were freemen who entered into an agreement to hire their services and had the right to give notice. They are of Roman and not German origin,[3] like the following, which is not exclusively Teutonic, but is found among other peoples.[4] Thus we have here a very old development, which is apparent even in pre-Roman times, and persists in the *patrocinium* of the late Roman period, as also in the German or old Teutonic right of maintaining a following. We know the great importance which it had in the military undertakings of the German peoples even in the time of Tacitus.[5] Special attention may be drawn to the emphasis which he places in his military descriptions on the *clientes* of the German army-leaders.[6] It has recently been shown [7] that parallel to the *bucellarii* of the late Roman period, there were the *pueri* (private soldiers) of the Franks, the *gasindi* of the Lombards, the *thegns* (cf. Gr. τέκνον) of the Anglo-Saxons, and the *vassi* of the Celts. These were all freemen who had placed themselves under the protection (*patrocinium, obsequium*) of a lord and were maintained by him in return for services, and especially military services.

Since the publication of H. Brunner's works, there can be no serious doubt as to the historical connection between vassalage and following [8]; but their parallelism with the late Roman *patrocinium* must not be overlooked. It certainly exerted a great influence in the West and South. It would appear especially significant that among the Visigoths, where Roman influence is known to have been strong, the *bucellarius* is ranked beside the man who *in patrocinio constitutus est*.[9]

In Frankish times the establishment of a relation of vassalage was based on commendation. *Commendare* was the late Roman term for entering into a man's *patrocinium*.[10] There was, in fact, no difference between the early medieval German and the late Roman development. Handshaking on the occasion of entering into a protective relationship became customary at that time and was never thereafter omitted. There are many pictorial representations on Roman coins where the handshake is a pledge of fealty.[11] Among these there exists one of the age of Antoninus Pius (138–160) which shows him pledging a king of the Quadi to allegiance in this way.[12] Moreover, commendation appeared among both Visigoths and Lombards.[13] Futhermore, the inability to revoke the connection, which was entirely alien to the German following, is not a characteristic of vassalage either. This is seen in the description mentioned above of the position of the *bucellarius*, and is also proved for Carolingian times by Southern Frankish documents.[14]

[1] Cf. O. Seeck, "Das deutsche Gefolgswesen auf römischen Boden," *Zeitschr. d. Savigny-Stiftung f. RG.*, German sect., xvii, 112 ff.

[2] Beniamin, op. cit.

[3] Delbrück, *Gesch. d. Kriegskunst*, ii², 471 f = ii³, 483 f.

[4] See Germ. edit., ii², 303.

[5] See above, 180.

[6] See the documentary evidence quoted in Dahn, *Könige*, i, 59, note 6.

[7] Cf. Guilhiermoz, op. cit., 52 ff. Also Delbrück, op. cit., ii², 456 f.

[8] *RG.*, ii, 263.

[9] Cf. *Lex Visigot.*, v, 3, 1; *MG. LL.*, sect. i, t. 1, 216.

[10] Brunner, *RG.*, ii, 271.

[11] Cf. Brunner, *RG.*, ii, 272, and Guilhiermoz, op. cit., 83 f., also Sittl, *Die Gebärden der Griechen und Römer*, 129, 319 f., and Couhé, *De la manus*, Lille, 1888. Cf. also Garucci, *Storia dell' Arte Cristiana*, tav. 192, 4, 7.

[12] Cf. H. Cohen, *Description Histor. des Monnaies frappées sous l'Empire Romain*, Antonin Nr. 759, t. ii, 383, pl. xiii (1859).

[13] See Germ. edit., ii², 305.

[14] See my work on "Westgotisches Recht im Capitulare de Villis," *Zeitschr. f. RG.*, xxxvi, 21 (1915).

With the help of these conclusions we are now in a position to challenge the main thesis that the feudal fief arose from the fusion of two originally separate legal institutions, *vassalitium* and *beneficium*.[1] On the contrary, these were never separate anywhere or at any time in history. For whether vassalage be explained as a continuation of the German institution of the following,[2] or of the Gallo-Roman institution of the client,[3] in neither case was the relationship one which involved a purely personal loyalty with no material basis; it was closely dependent on the economic maintenance and equipment of the vassal—the German follower was equipped by his lord and the Roman client by his patron.[4] In point of fact, no sound explanation or documentary evidence has ever been produced to justify the assumption of a separate development of those two principles in pre-Carolingian times. Let us make no mistake. The separation was a theory invented to satisfy a juristic interpretation of the legal conditions of the period, rather than an actual fact. There can be no doubt that these two legal institutions were directly connected long before Carolingian times.[5]

We know to-day that the great estates did not appear for the first time in the Carolingian era, but existed among the German peoples long before.[6] They were especially numerous among the Franks in the sixth century, owing to the partition of the kingdom among Clovis' successors and to the civil wars of the second half of the century, which made the kings more and more dependent on the support of the nobles, to whom they therefore gave rich gifts of land. It was then that the feudal system developed, not out of the fusion of two hitherto separate legal institutions, *vassalitium* and *beneficium*, but out of the increasing practice of making large temporary gifts of land to vassals, similar to those characteristic of the Romano-Celtic *patrocinium* and the ancient German following. Not only had the aristocracy the lands for this purpose at their disposal, but they were politically stronger, and both secular and ecclesiastical nobles had special reasons for developing the system. In the civil wars of the time, and during the decline of the royal power, the man who had great military resources could accomplish most; he was the most favoured by the king and had the greatest political power. In the civil wars of the second half of the sixth century the vassals were the decisive factor.[7]

These organizations were not, as P. Roth thought, purposely and systematically called into being by the state, or the representatives of state authority, in order to realize definite political aims, such as the reform of the army. The introduction of *senioritas* and the consequent maintenance of the old army-system was not a device by the monarchy to make sure, from a military point of view, of the free owners, lay and ecclesiastical, of districts held under an *immunitas*, who were using their immunity as an excuse to avoid military service.[8] *Senioritas* was not an innovation introduced with set purpose at a given time by Charles Martel, any more than was the personal military service of the higher clergy, which Roth believed to have been introduced by the state for the same reason at the beginning of the eighth century.[9] On the contrary, the development and increase of vassalage

[1] Cf. Brunner, *R.G.*, ii, 243, and recently also v. Voltelini, *Prekarie u. Benefiz*, 302.
[2] See above, 181.
[3] Fustel de Coulanges (*Institutions polit. de l'ancienne France, iv: les origines du système Féodal* (1890), 205 ff.).
[4] See Germ. edit., ii², 306.
[5] Cf. above, 44 ff.
[6] See Germ. edit., ii², 309.
[7] See Germ. edit., ii², 307 ff.
[7] Delbrück, op. cit., 459; see above, 286.
[9] *Roth Benefiz.-Wes.*, 356.

was not effected by a deliberate encouragement of *senioritas* by the state authority, but coincided with the decline of the latter. Indeed, it is a symptom of that decline. The more powerful the lay aristocracy became during the sixth century, in the time of struggles for the throne and civil wars, and the greater their economic strength, the more often the small freemen (as in late Roman times) were obliged to seek the protection (*patrocinium*) of the *potentes*; the nobles were thus in a better position to give fiefs of land to large numbers of vassals and so to achieve their political aims.[1] In that period the right of immunity enjoyed by these *potentes* seems to be complete, as is shown as early as 614 by Clothar's Edict.[2] The first Carolingians, the mayors of the palace, Ebroin and especially Charles Martel, tried to limit and resist this great power of the aristocracy.[3] King Pippin and Charles the Great, after strengthening the royal power, attempted to bring the *senioritas* again into dependence on themselves and to subject it to state authority.[4]

The Carolingians were not trying to tighten the bond of vassalage, but were attacking the apparently frequent reduction of vassals to serfdom by their lords, who also deprived them of their hereditary lands,[5] an interpretation which is borne out by what we know otherwise of the social policy of these first Carolingians.[6] If they had simply supported *senioritas*, they would have achieved the reverse of what Roth and Brunner considered to be their military interests. For when the vassals lost their freedom, they no longer had any direct obligation to perform military service, as the state lost direct control over them. Charles merely wished to prevent the dangers which might threaten the state from vassalage or from *senioritas*.[7]

By their efforts to avoid these dangers, the early Carolingians, from Charles Martel to Charles the Great, managed to check the process of feudalization for a short time, but not to stop it. From the beginning of the ninth century political developments were again advantageous to the feudal lords. The partitions after the death of Charles the Great, the decline of royal power under Lewis the Pious, the menace to the state from Northmen and Saracens, and, finally, the constant civil wars which led, as in the second half of the sixth century, to the formation of political parties in the sub-divisions of the kingdom, obliged the kings to grant their supporters not only royal lands but also royal privileges, in order to secure their services. Public rights fell more and more into the hands of the private aristocracy; and the continual growth of their political influence, together with the complete collapse of the central authority, led at last, at the end of the Carolingian period, to the phenomenon which we call the feudalization of the state.[8]

Closely connected with the theory of the external causes of feudalism, there is another theory concerning the rise of the system of *beneficia*. Here also earlier precedents and points of departure were evident, viz. the ecclesiastical *precaria* and the Merovingian gifts of land, which were inalienable and were limited as regards the right of inheritance.[9] But it was assumed that the appearance of genuine

[1] See above, 198.
[2] Cf. Kroell, *L'immunité franque*, 57.
[3] Cf. Waitz, *VG.*, ii, 2[3], 400 ff., and iii[2], 11 f., and above, 211 f.
[4] Cf. also Flach, *Les origines de l'ancienne France*, 1, 120 ff., and v. Voltelini, op. cit., 303.
[5] Cf. *Capit. Karolo Magno adscript. MG.*, Capit. 1, 215, c. 8.
[6] See above, 219 and 223.
[7] T. Flach, op. cit., 1, 122.
[8] See my *Wirtschaftsentwicklung der Karolingerzeit*, ii[2], 372 f.
[9] Cf. Brunner, "Der Reiterdienst und die Anfänge des Lehenswesens," *Zeitschr. f. RG.*, viii, 29 f. (1887).

beneficia, like the change in the army-system, belonged to the time of Charles Martel and his sons. The most recent research connects it closely with the measures by which the Arnolfing mayors of the palace seized a large quantity of Church property for military purposes and secularized it. Since, according to canon law, the appropriation of Church property was illegal and only its usufruct could be transferred, it is thought that the Church lands were given by these first Carolingians in the form of a *ius in re aliena*, a fief, after the model of the ecclesiastical *precaria*, instead of the Merovingian limited ownership. Scholars had already noticed that from time to time under the Merovingians Church property was appropriated. But this was looked upon as a sporadic occurrence, compared with which the measures of the Arnolfing mayors of the palace seemed a comprehensive political scheme.[1] The only way by which these mayors could cope with the necessity of finding an effective cavalry to fight the Saracens was by granting fiefs on a grand scale, and since the exhausted royal lands were not sufficient for the purpose, they relied on Church property, which was indeed, originally, for the most part crown-land.[2]

The whole problem must now be dealt with quite differently. If vassallage did not develop first under Charles Martel in consequence of the Saracen menace, his gifts of Church lands take on quite a new aspect. It is no longer necessary to envisage a sudden, deliberate change, and the fact that even under the Merovingians Church property was encroached upon now becomes of more importance. On closer examination, these encroachments seem to be of exactly the same character as those of the mayors of the palace and the first Carolingians. Neither is more or less "partial" or "occasional" than the other, for even Charles Martel did not undertake a formal secularization.[3]

Brunner himself had to admit that in the seventh century we find a precedent for the later *precariae verbo regis*, i.e. gifts of land from Church property at the king's command.[4] In reality, however, these date from a much earlier period, and were by no means infrequent even then.[5] Hauck observed with considerable subtlety that a passage hitherto little noticed in the decrees of the Council of Paris (556–573) contained a reference to *precariae verbo regis*.[6] The plunder of Church property is being attacked, and the expression *improba subreptio* is used. But this would be correct only if the Church were being actually robbed, under the appearance of not being so. This was the case in the so-called *precariae verbo regis*. Hauck's suggestion becomes a certainty if we take the context into consideration; for the pretext under which this *improba subreptio* occurred is quite clearly and expressly connected with the king's liberality,[7] and the expression used (*largitas*) does not merely describe the gracious gift of the king, but is actually the technical term for royal *beneficia*.[8] Moreover, a second word is employed which was the technical term used to denote the applicants for such *precariae* at that period (*competitoribus*).[9]

[1] Brunner, ibid., 30.
[2] Brunner, *DRG.*, ii, 246. For detailed discussion see Germ. edit., ii², 313 f.
[3] Roth, *Benefic.-Wes.*, 330.
[4] *Zeitschr. d. Savigny-Stiftung f. RG.*, viii, 30, note 4.
[5] See also Loening, *Gesch. d. deutsch. Kirchenrechts*, ii, 693.
[6] *KG.*, 1⁴, 414, note 3.
[7] *MG.*, Concil., i, 142.
[8] Cf. the *Marculf Formulary*, i, 13, *MG. FF.*, 51, also Waitz, *VG.*, ii, 2³, 242; ii, 1³, 311 f., note 2.
[9] Cf. Germ. edit., ii², 316.

Thus *precariae verbo regis* and *beneficia* given by the king from Church lands are proved to have existed in the middle of the sixth century.[1] Indeed, a canon of the same council proves that they were customary even in Clovis' time.[2] It should be noted that the technical terms used here are similar—*competissent* and *competitoribus*, and the similarity in form shows a similarity of meaning.[3] Another canon of the Council of Paris (556–573), concerning the application for a royal *beneficium*, uses the word itself.[4] We can see that what the bishops especially disliked was not so much the royal gift of Church property as the right of inheritance in the family of the *beneficiatus*.[5]

Moreover, it is most significant that in speaking of these lost Church lands the bishops make use of the terminology of money-lending (*res creditae* or *credendae*), and look upon it as their duty not merely to keep the documents by which believers had bequeathed their last gifts to the Church, but to protect the land itself and prevent it from being permanently lost.[6] Church ownership was not to cease; only usufruct during life was to be granted to the recipient of the property. In this connection it is important to note that even in the Roman period (sixth century) *beneficium* meant "pay" or "maintenance", and indicated a provision for life only.[7]

Charles Martel was, therefore, merely carrying on a right which had been in use before, and it is not true that in his time the appropriation of ecclesiastical property reached such a pitch that it reduced the wealth of the Church. Again and again during the sixth and seventh centuries the Frankish Church synods attacked this practice; we see this already at Clermont (535).[8] The wording of these decrees scarcely leaves room for doubt that the *precariae verbo regis* must have been very extensive even at that time.[9] Beside Hauck's references, mention may be made of a canon of the Council of Mâcon (585), which may not be very explicit in itself, but on which a clearer light is shed by the similar wording used in a clearer context in the decrees of the Synod of Paris (556–573) mentioned above.[10] Even then the episcopate realized that this procedure was dangerous, and insisted on the return of the lands thus lost.

Let us make no mistake. Charles Martel certainly must have distributed *precariae verbo regis* to no small extent. The fact that opposition to this practice was particularly violent during his son's reign and that some of this Church property was actually given back, is due to quite different circumstances. It must not be forgotten that such restitutions could not have taken place during the previous period of decay and confusion in the Frankish Church, owing to the

[1] Cf. Germ. edit., ii[2], 315, Note 113.
[2] Cf. op. cit., 143.
[3] "Conpetire" must be regarded as a technical term of that time which denotes a claiming of Church property though not a direct seizure by force. Cf. ibid., c. ii: cf. also the Council of Tours, 567, c. xxv; op. cit., 134—also ibid., 129, 17.
[4] c. vi, op. cit., 144: "ut nullus res alienas conpetire a regis audeat potestate. Nullus viduam neque filiam alterius extra voluntatem parentum aut rapere praesumat aut regis beneficio estimat postulandum."
[5] Cf. c. i of the Council of Paris (556–573).
[6] Ibid.
[7] E. Mayer, "Die Entstehung der Vassalität u. des Lehenwesens." *Festgabe f. R. Sohm* (1914), 53.
[8] *MG.*, Capit. i, 67, c. v.
[9] Cf. the argument based on the passage quoted from the first canon of the Council of Paris, *MG.*, Concil., i, 142, in Germ. edit., ii[2], 316, note 117.
[10] c. xiv, *MG.*, Concil., i, 170. Also cf. *Form. Marculf.*, i, No. 40. *MG. FF.*, 68 *ex nostro late re.*

great personal power of Charles Martel. The later Church reform, as we have seen,[1] bore its most important fruit under "the Hammer's" pious sons. The appropriated Church lands were to some extent given back at this time, because that was one of the necessary preliminaries to reform. The description of conditions in the Frankish Church, given by Boniface, the head of the reform party, a year after Charles Martel's death,[2] makes this unmistakably evident. Moreover, it is known that Boniface personally insisted on the restoration of ecclesiastical property.[3]

It is essential to point out, however, that such restitutions had already occurred in the sixth and seventh centuries. The decrees of the councils of the time expressly say so.[4] They probably decreased in number because no more synods were held owing to the decay of the Frankish Church from the second half of the seventh century onwards. It is not true that Church lands were almost entirely in the hands of the laity in Charles Martel's time, and that Carleman promised complete restitution. This view was based for the most part on the words of later Church reformers, especially on those of Hincmar of Rheims, of whom it has been said with truth that he laid on his colours even more thickly than Boniface himself.[5]

We must, therefore, be more cautious and discerning in our judgment of Charles Martel's actions. Particularly fallacious is the idea that these appropriations "took place erratically and capriciously, and were in fact often nothing but a robbery of the Church."[6] The stridency of later Church reformers should not exert too powerful an influence upon our view. The sources on which such opinions are based are definitely later in date and entirely onesided.[7] Modern scholars hold that after a period of arbitrary plunder, a regular procedure was introduced under Pippin, Church property being systematically surveyed (*descriptio*) and on that basis divided (*divisio*), one part being returned to the Church and the other taken for state, and especially for military, purposes. Let us proceed from the terminology: both the expressions, *descriptio* and *divisio*, used in official documents of the early Carolingian period, are technical terms of definite legal significance. The former is the term for official enrolment for the purpose of public taxation, and occurs constantly in Merovingian documents[8]; the latter means not merely a division,[9] or a favour bestowed on Church property (as has been assumed owing to the fact that it was retained under the sons of Charles Martel),[10] but a sharing in conjunction with an appropriation of Church land.[11] It is better not to call it secularization, as the ownership of the Church is not abolished but should be preserved. It is quite wrong to assume that the so-called *divisio* was a Carolingian innovation, not occurring before the time of Charles Martel. This idea is chiefly based on later sources (especially Hincmar)

[1] See above, 278 f.
[2] Cf. Hauck, *KG.*, 1^4, 415.
[3] Cf. Roth, *Feudalität u. Untertanenverband*, 117.
[4] See canons 1 and 2 of the Council of Paris and cf. Waitz, *VG.*, ii, 2^3, 332.
[5] See Hauck, *KG.*, 1^4, 415, note 2.
[6] Stutz, *Gesch. d. Kirchl. Benefiz.* i, 182.
[7] Roth, *Benefiz.-Wes.*, 327, explained this correctly.
[8] Cf. Roth, *Benefiz.-Wes.*, 85 ff.
[9] See Ribbeck, *Der sog. Divisio des fränk. Kirchengutes., Excurs.* iii, 103 ff.
[10] Waitz, *VG.*, iii^2, 38, note 1.
[11] Cf. Roth, *Benefiz.-Wes.*, 335, and *Feudalität*, 105, and Pöschl, *Bischofsgut u. Mensa Episcopalis*, 1, 133 ff.

which knew nothing of the events of the sixth century.[1] It is even less correct to speak of the *divisio* as a separate procedure introduced at a definite moment, 743 or 751.[2] Waitz pointed out that appropriations on a grand scale can be proved to have taken place in the reigns of Clothar I (d. 561) and Dagobert (631); and that the later account given in the *Miracula S. Martini vertavens.*, which seems to indicate a *descriptio* and *divisio* for military purposes in Dagobert's time,[3] and which Roth doubted, is in fact borne out by the contemporary account of Fredegarius.[4]

Moreover, the decrees of the sixth century councils, mentioned above,[5] show clearly not only that the kings often appropriated Church property but that they then bestowed it upon their vassals. Even at that time the Church was pressing for the restoration of these lands "without prejudice to the king's liberality",[6] and especially for the drawing up of charters of *precariae*, so that her right of ownership might be preserved for the future.[7]

The technical terms *dividere* and *divisio* may also be found in the Frankish kingdom in the sixth century. Gregory of Tours tells us that King Childebert remitted the taxes due from the Church and clergy of Clermont, and he remarks that it would have been very difficult to collect these as the lands had been much "apportioned".[8] The usual translation of "divided" or "cut-up"[9] does not quite meet the case, because after a division (for example, among heirs) these lands would not have been completely exempt from taxation.[10] But it was a different matter if they were "apportioned", i.e. allotted to royal vassals by means of a royal *divisio*.[11] There is a still earlier instance in a passage in the pastoral letter of the bishops of the province of Tours to their people in 567. The believers are exhorted to give their tithes, and this is followed by the demand that everyone should give also the tithes of his slaves, *quia dicitur in illa infirmitate ad divisionem nescio quam venire personas, quasi novem auferat, decimam ut relinquat.* The whole passage shows that large appropriations must already have taken place. In the same year, and in the same city of Tours, a council was assembled which protested vehemently against such appropriations of Church lands by the laity.[12] The *clades quae imminet* referred to in the subsequent pastoral letter probably imply a *divisio*, because a loss of property is distinctly included. In the decrees of the contemporary Council of Tours, in which the writers of this pastoral letter themselves took part, the hope is expressed at the beginning that the fury of the kings against one another might not be harmful to ecclesiastical affairs. It was at this very time that the civil wars due to the quarrels of Chilperic and Sigibert, and the royal seizure of Church lands were starting. Clothar I died in 561. The Council of Paris (566–573) shows that *precariae verbo regis*

[1] Cf. Roth, *Benefiz.-Wes.*, 327 ff., and Beugnot, "Sur la spoliation des biens du clergé attribu à Charles Martell," *Mém. de l'Institut. Academ. des Inscript. et Bell. Lettres*, ii, 360 ff.
[2] See Roth, op. cit., and also Brunner, op. cit., ii, 248.
[3] *MG. SS. rer. Merov.*, iii, 572.
[4] *VG.*, ii, 2[3], 331 f.
[5] Cf. 290 f.
[6] Cf. c. 3 of the Council of Paris (556–573), *MG.*, Capit. 1, 143.
[7] Ibid., Capit. 1.
[8] *Hist. Franc.*, x, 7; *MG. SS. rer. Merov.*, 1, 414: *ac divisis in multis partibus ipsis possessionibus.*
[9] See Giesebrecht in *Geschichtsschreibern d. deutsch. Vorzeit*, 6. Jahr., part v.
[10] See the discussion of the *Divisio de alode*, on p. 274 above.
[11] *MG.*, Concil. i, 138.
[12] Ibid., 134 f., c. xxv (xxiv), xxvi (xxv).

must already have been distributed very extensively. In support of this suggestion may be quoted another passage in the pastoral letter, in which it is made clear that men are encouraged to pay their tithes for the reason that they would thereby make the rest of their property safer.[1] If we add to this our knowledge of the later state regulations concerning tithes under the first Carolingians, the importance of the whole matter is clear. When part of the appropriated land was restored to the Church, her tithes from the rest of it were also granted to her by the state. Amends were then made for the retention of the remaining part.[2]

There is, therefore, a possibility that in the sixth century also the kings may have acted similarly when they appropriated this land. It is often assumed that the duty of paying tithes, which was previously privately enjoined by the Church, became a general law of the state under King Pippin. It has already been shown that the charter granted by Pippin to the bishopric of Utrecht in 753, confirming, at the request of Boniface, the tithe already granted from the fiscal lands, refers to previous charters, and secures privileges which had clearly been acquired in the time of Charles Martel.[3] It may well be that in his time the payment of tithes was made compulsory by the state. The exaction of tithes played an important part in the reforms of Boniface.[4] Charles Martel, in so far as he did help in these reforms,[5] probably did so in order to delay the restitution of the appropriated lands. It is no coincidence that the earliest mention of the bestowal of tithes in a Frankish royal charter is in the case of Utrecht,[6] where the mission of Boniface first began; and in 722 Charles Martel made a grant to Utrecht.[7] This seems to bear out the theory that the introduction of tithes was especially furthered by Anglo-Saxon influence.[8] Boniface's ecclesiastical reforms at the beginning of the eighth century in many respects continued those which had already been attained in the sixth century. The fact that the tithes which were exacted in that century were not generally prevalent, and that little is heard of them in the seventh century, may be explained by the rapid rise of the lay aristocracy and the general decline of ecclesiastical discipline caused by them.

To sum up, it may be said that the first Carolingians, from Charles Martel onwards, were anticipated by the sixth century kings not only in the appropriation of Church property for state purposes, but also in the systematic and legal methods employed in putting this practice into effect (*descriptio ac divisio*) and in the restoration of part of this land at the demand of the Church, together with compensation in the form of a state recognition of the payment of tithes. For in accordance with the account given above of the relation of the Frankish kings to the bishops and their councils,[9] it can hardly be supposed that the pastoral letter of 567 and the decrees of the Council of Mâcon in 585, which order the payment of tithes from all products under pain of excommunication,[10] could have come into existence without the king's knowledge or consent.[11]

[1] Op. cit., 137.
[2] Roth, *Gesch. d. Benefiz.-Wes.*, 366.
[3] See my *Wirtschaftsentwicklung der Karolingerzeit*, II², 23, note 6.
[4] See the letters *MG. Fpp.*, iii, 344 (747); 365 (748); 375 (751).
[5] Cf. Hauck, *KG.*, 1², 454=1⁴, 469.
[6] *MG.*, D. Car., 4 (753).
[7] Böhmer-Mühlbacher, *Reg. Imp.*, 1², note 34.
[8] See E. Perels, *Die kirchl. Zehnten i. karoling. Reich.*, Berlin, Diss., 1904, 18 f., and Pöschl, *Bischofsgut u. Mensa Episcopalis*, 143.
[9] See above, 276.
[10] Chap. 5, *MG.*, Capit. 1, 167.
[11] Cf. the Council of Tours, *MG* Concil., i, 122.

Attempts have recently been made to seek more ancient roots for the so-called *divisio* of Frankish ecclesiastical property and it has been associated with Southern Gallic or Spanish legal forms. It is argued that in these areas the Church was not freed from the duty of receiving billeted soldiers, so that it was merely a question of resuming once again the method of maintaining troops which prevailed in the south of Gaul. At the same time attention is drawn to the oft-quoted measures of King Clothar I in the sixth century,[1] by which he demanded from the Church a third of the income and not the land itself.[2] The purpose of this appropriation of land and its bestowal was never convincingly explained by Brunner, who did not succeed in proving that Charles Martel really intended to increase his cavalry by this so-called secularization; the sources merely tell us that the army profited by it.[3] He was obliged to admit that the *beneficium* as such did not bind a man to cavalry service[4]; there were vassals who were not obliged to perform military service, and others who were foot-soldiers. Indeed, it is not true that the *beneficium* involved the possession of land with compulsory military service,[5] as recent research has shown.[6] *Beneficium* and vassalage were not identical. There were numerous *beneficia* whose recipients were not vassals.[7] Many proofs of this have already been quoted,[8] but another (particularly important by reason of its early date) may be added: the first Council of Orleans (511) decreed that the clergy should not apply to the king for *beneficia* without their bishop's permission.[9] The circle of beneficiaries was greater than that of the vassals, and the latter was comprised within the former. It does not seem credible that, vice versa, there should have been vassals who had no *beneficium*, as has sometimes been suggested.[10] It has been shown that these two legal institutions were bound together long before the time of Charles Martel.[11] Imperial *beneficia*, known to have existed since Roman times, may to some extent be considered as precursors of those of the Frankish kings.[12] The passages quoted earlier concerning the occurrence of the so-called *precariae verbo regis* in the sixth century, prove that a similar process took place under the Merovingians.

Brunner draws a distinction between the two types of Merovingian land-grants, the one bestowing unlimited hereditary ownership and the other ownership for the duration of personal service, and explains that the main problem of the origin of Frankish feudalism hinges on the appearance of grants giving limited rights of disposal, which make it possible to connect up the development of Carolingian *beneficia* with a legal institution already in existence under the Merovingians.[13] If we insist that grants of land which, owing to some relationship of service, were given to the royal following or to officials, may in cases of doubt not have been regarded as hereditary, but may have been limited to the lifetime of

[1] Gregory of Tours, *Histor. Francos.*, iv, 2.
[2] E. Mayer, "Die Entstehung d. Vasallität u. d. Lehenwesens.," *Festgabe f. R. Sohm*, 1914, 54.
[3] Roloff, *Ilbergs Jb.*, ix, 390 f. (1902).
[4] *Zeitschr. f. RG.*, viii, 37.
[5] Cf. Roth, *Benefiz.-Wes.*, 435.
[6] G. Seeliger, *Die soziale u. polit. Bedeutung d. Grundherrschaft i. früheren MA.*, 44.
[7] Seeliger, op. cit., 30 ff.
[8] See Roth, op. cit., 429, 435.
[9] c. vii, *MG.*, Concil., i, 4.
[10] Brunner, *RG.*, ii, 266, and Delbrück, op. cit., ii³, 461 f.
[11] See above, 287 f.
[12] Brunner, *RG.*, ii, 246. Cf. the documentary proofs in Thesaurus, *Ling. Lat.*, 2, 1886, C. and in v. Voltelini, op. cit., 279 ff.
[13] *Berliner Sitz.-Ber.*, 1885, 1197.

the recipient and subject for their continuance on the condition that the servant should not leave the service of the giver without the latter's consent, then it is probable, from this close connection and from the lack of definite evidence to the contrary, that *beneficium* and *vassalitium* were closely connected before the Carolingian period, even if Brunner's theory of their origin be correct.

We now come to the important question, what measure of influence did the Church exert on the rise of the feudal system? P. Roth declared that, quite independently of German legal conceptions, the custom arose in the Church of granting ecclesiastical property to clergy or laity in usufruct. Some scholars thought that this was a form of compensation for maintenance, which otherwise had to be supplied by the bishop.[1] Then a number of others,[2] advanced the thesis that the ecclesiastical *beneficia* arose out of the *precaria* granted from the sixth century onwards by the bishops to clergy and later to laity. Here there was a fief granted merely in usufruct, not only by reason of its nature, Church property being inalienable, but also because the clergy were mostly unmarried and a natural term was therefore set to the usufruct. Since the Church and its members lived according to Roman law even in the Frankish kingdom, there arose in connection with the Roman *precarium* the *precarium*-fief, embodying as its main feature the possibility of revocation, and thus protecting the interests of the ecclesiastical landowners. The *precatoria* (in Italy *libellus*), after which the grant of the fief followed, had to be renewed every five years To secure her right of ownership, the Church demanded from the beginning that the secular *prescriptio* should not affect her. This demand, made in France as early as the first Council of Orleans (511) and repeated again and again, was acceded to in all essentials by the *constitutio* of Clothar II (614). In Italy *precaria* were granted only for twenty-nine years, in order to avoid the disadvantageous consequences of the Roman prescriptive period, which was thirty years.

Lately, this view has been challenged from many angles and new arguments have been raised.[3] On the one hand, Ulrich Stutz denies that the clerical *precaria* had any direct influence on the ecclesiastical *beneficium*, and suggests that the latter more probably arose out of the *Eigenkirchenrecht*,[4] or right of maintaining a private church. This covered both the Church and its property and therefore the fief also consisted of the Church and its property; and as the private lordship over the Church comprised the conduct of its spiritual affairs, the fief included the duty and right of carrying on the Church which had been handed over.[5] Important students of ecclesiastical law have opposed this view for a number of weighty reasons.[6] No economic historian can fail to observe that the essential hypotheses upon which the theory stands or falls cannot in fact be justified. Stutz thinks that down to the time of Charles Martel the bishop granted his clergy *stipendia* only, but not the *beneficium*, which would have afforded a quite different protection in law, since the *praebenda*, on account of the objective and subjective perpetuity which they embodied, could neither be separated from the office nor

[1] *Benefiz.-Wes.*, 433.
[2] Loening, op. cit., ii, 696 ff.
[3] Cf. Brunner, *RG.*, ii, 250; Schröder, *DRG.*, vi[6], 173.
[4] Lehen u. Pfründe, *Zeitschr. d. Savigny-Stiftung f. RG.*, xx, 213 ff., esp. 223.
[5] Ibid., 225.
[6] Friedberg, *Lehrbuch d. kathol. u. evangel. Kirchenrechts*, 6th edit., 594, note 24; Ch. v. Meurer *Bayerisches Kirchenvermögensrecht*, ii, 13 ff. (1901); A. Pöschl, *Bischofsgut u. Mensa Episcopalis*, i, 36, note 4.

taken from the office holder except by process of law; thus he argues that diocesan property came down to Carolingian times undiminished, except by such losses as were brought upon it by secularizations and other similar regulations. There is no proof of this assertion and there can be none.[1] Indeed the tendency toward perpetuity in clerical *precaria* appears long before the Carolingian period, and as early as the Frankish kingdom of the sixth century. The omission to embody these grants in charters, an evil repeatedly combated by the Carolingians, was a serious disadvantage to the Church, because it led to a permanent loss of land, and it was obviously present among the Franks at the beginning of the sixth century, as the decrees of the Council of Epao (517) clearly show.[2]

But yet another of Stutz's theories must also be called into question. He takes the view that there was no transition from the clerical *precaria* to the original form of the Church *beneficium*, i.e. a fief which was not official property entailing official duties, but was connected with the Church itself, and had its own appurtenances and income, in return for which the official duties were performed as services due from the fief. He considers that there was another origin for this, which could only be understood from the *Eigenkirchenrecht*. As a matter of fact, the earlier Church *beneficia* in the Frankish kingdom coincides very closely with those which are supposed not to have been introduced until the time of Charles Martel. The Council of Epao (517) decreed that fiefs belonging to clergy who had gone to another bishopric and became bishops there were to be given back. At the same time they are confirmed in their continued possession of those lands which they had bought themselves,[3] and so it seems clear that the feudal property was bound up with the office as such, i.e. with the actual performance of service. If we also take into consideration those decrees of the councils of the early sixth century, which declare that *beneficia* are not to be taken from the clergy at the death of a bishop by his successor,[4] we may conclude not only that clerical *precaria* were made in perpetuity, but that the retention of *beneficia* is based on the continued performance of the office; there is no question here of a merely personal endowment of individual clergy. Connection with the office itself is what counts.

Finally, Stutz thought that the fief was essentially different from the ecclesiastical *beneficium*, in that the latter lacked the *commendatio* and therefore the main principle of vassalage. But this cannot be so readily maintained.[5] In the case of the lower clergy, to which Stutz turns for an understanding of ecclesiastical law, there was no special need for any such commendation to the bishop, as they were in any case pledged to obedience and loyalty to him, as their spiritual guardian. Here, also, the earlier Church *beneficia* reveal features which are supposed to have developed only in the later fiefs of Charles Martel's reign. We see this best from Canon 20 of the Council of Orleans (538). In this the condition of the enjoyment of an ecclesiastical *beneficium* is laid down as *obedientia et affectus* to the bishop; and the latter is entitled to withdraw it in case of *inobedientia vel contumacia*.[6] The negative corresponding to this positive condition shows what is meant by *affectus*. The opposite of insubordination (*contumacia*) is clearly not only obedience but goodwill and loyalty. The similarity

[1] See Germ. edit., ii[2], 330.

[2] *MG.*, Concil., I, 23, c. xviii. Cf. also the Council of Orleans (511), c. 23. Ibid., 7, concerning the suspension of the legal consequences of the præscriptio in favour of the church.

[3] c. 14, *MG.*, Concil., I, 22.

[4] Cf. Council of Orleans (538), c. xx: op. cit., 79.

[5] Op. cit., 234.

[6] Op. cit., final sentence.

of the terminology used in both cases deserves careful consideration. In the Council's decrees the Church *precaria* are described as *munificentiae* (Orleans 538, c. 20) or *de ecclesiae remuneratione* (Epao, 517, c. 18); the king grants them according to the Marculf formulae *ex munere largitatis* (i. 13), and the possessor holds them *ex munificentia regum* (i. 34). The usufruct, which is granted for life, is called a *beneficium* (i, 13). Hence it would appear that *precaria* and *beneficium* are often used indiscriminately for the same thing.[1] *Beneficium* is the complement of *precaria*; *precaria* is the plea of the feoffee, *beneficium* is the graciousness of the enfeoffing lord.[2] The same thing appears in the earliest ecclesiastical *beneficia*. These are given by the grace (*gratia*) of the bishop for the *obsequia* of the receiver.[3] The very expression *obsequium* is now the technical term used in all commendations and relationships of vassalage.[4] Thus it cannot really be said that there is a fundamental difference here between ecclesiastical and royal *beneficia*. Moreover commendations of priests and clergy may be found, especially in Bavaria, where they occur frequently in the Freising landgrants. The giving up of oneself (*se tradidit ipsum*) does not there mean an enslavement, but a *commendatio*, a giving into the protection of a lord, in this case the Church of Freising.[5]

L. M. Hartmann has tried to explain the origin of Frankish *beneficia* from another angle.[6] He defers to the older view, so far as to admit that there was some connection with preceding Roman conditions,[7] but differs from it in one important point, viz. the conception of the relationship between the Frankish *precaria* and the Roman *precarium*. He thinks that they had "only the name in common"[8]; and that the Roman institution was of very little importance in the late Roman Empire, while the *precaria* referred not to the legal content but to the form of the agreement, which might possibly be applied to various types of legal context. F. Schupfer has already sufficiently exposed Hartmann's "fundamental error" in considering that the *precaria* was not an actual contract.[9] Moreover, it is entirely wrong to assume that in late Roman times the *precarium* had as little importance as Hartmann tried to prove from the well-known passage in Paulus. Against this view we have a law of the Emperors Valentinian and Valens (365) which deals with the special difficulties in the relations of the territorial lords with their tenants under the *precarium*. No tenant might lay claim to ownership on the grounds of long possession, lest the lords should be forced either to lose the leased land, or to exclude useful tenants, or publicly to assert their property rights every year in order to preclude the right of prescription.[10] This shows how extensively the *precarium* must have been used, and at the same time makes it clear that it is erroneous to consider that rural labourers alone are concerned and that the holder of the *precarium* could not be a tenant in our sense of the word.[11]

[1] Cf. Waitz, *Üb. d. Anfänge d. Vasallität*, 37.
[2] G. Seeliger, op. cit., 28.
[3] Cf. Council of Orleans, 538, c. 20.
[4] Cf. Waitz, *VG.*, ii, 1[3], 253.
[5] Cf. *Wirtschaftsentwicklung der Karolingerzeit*, ii[2], 9 ff.
[6] "Bemerkungen zur italienischen u. fränkischen Precaria," *Vierteljahrschr. f. Sozial- u. Wirt-Gesch.* iv, 348 (1906).
[7] For further details cf. Germ. edit., ii[2], 334. [8] Hartmann, ibid., 340.
[9] "Precarie e livelli nei documenti e nelle leggi dell' alto medio evo," *Riv. Ital. per le scienze giurid*, 40 (1905). Cf. F. Schneider, "Die Reichsverwaltung in Toskana von d. Gründung d. Langobardenreiche bis z. Ausgang d. Staufer" (568-1268), *J. Bibl. d. Preussisch. Histor. Instit. i. Rom.*, xi, 187, note 2.
[10] Demante, *Rev. Hist. de droit français et étranger*, vi, 52 (1860).
[11] Max Weber, *Röm. Agrargesch.*, 244.

Zulueta has observed from a study of the papyri that the *precarium* is often found in connection with the *patronatus* where freemen had placed themselves under the protection of great territorial lords.[1] It may have been particularly desirable in such a case, because it originally involved no tribute or service, a circumstance which must have made the entrance into such a relationship much easier. Zulueta showed in connection with the *Constitutio* of 365 quoted above that at that time a tax (*merces*) had to be paid by the *rogans* to the *rogatus*.[2] The content and general tendency of the *Constitutio* make its aims abundantly clear; it sought to secure ownership and was plainly a recognition payment. The payment of a tax is therefore not a later development, by which the Church sought to protect itself from alienation of its property.[3] The *beneficium* of the Carolingian period did not arise as a result of the lapse of earlier imperial and ecclesiastical measures, which placed limitations on the usufruct of Church property as a result of the encroachments of the new royal power on ecclesiastical lands; for the sources quoted above [4] clearly show that these "encroachments" were already taking place in Merovingian times, just as the *beneficium*, which was supposed to appear for the first time under the Carolingians, was also in existence then. Moreover, it is not true that the protective regulations in favour of the Church lapsed in the Carolingian period. This is proved by the obligation to provide *precaria* charters, which was enforced by state authority,[5] and by the prohibition of further bestowal after the death of the beneficiary.[6]

The observation that conditions of patronage often accompanied the *precarium* in late Roman times (fourth century) makes it possible to link it up with the early Frankish development. We have seen [7] that even in the sixth century, clerics often placed themselves under the protection of the king and of powerful territorial lords (*potentes*). The Church, as is made evident again and again in Conciliar decrees of the time,[8] opposed this practice strongly. Loening concluded [9] from this that the clergy of the churches and chapels on the great estates were often inclined to enter into this closer relationship with the lord in order on the one hand to evade the bishop's disciplinary powers, and on the other to obtain secular advantages from the lord. It must be added, however, that in 511 the first Council of Orleans was already forbidding the clergy to turn to secular lords *pro petendis beneficiis* without the bishop's permission.[10] The Third Council of Orleans (538) actually decreed that clergy who took over offices or used their acceptance of *patrocinium* as an excuse for not fulfilling their spiritual duties should receive no *stipendia* or *beneficia* from Church property.[11]

Thus the importance of the *patrocinium* and similarly of the Germanic *Munt*[12] in the development of *beneficia* is clear. The Edict of Clothar II (614) gave state recognition to these ecclesiastical prohibitions, for it took over *en bloc* the decrees of the contemporary Council of Paris.[13] The system of *beneficia* must in this way

[1] "Patronage in the Later Empire," in *Oxford Studies in Social and Legal History*, I (1909), 47 ff.
[2] Ibid., 48.
[3] L. M. Hartmann, op. cit., 348.
[4] See above, 290.
[5] Cf. my *Wirtschaftsentwicklung der Karolingerzeit*, 1², 213, and Pöschl, *Bischofsgut u. Mensa Episcopalis*, 1, 317.
[6] My *WE.*, 2nd edit., 235.
[7] See above, 279.
[8] See above, 280.
[9] Op. cit., 2, 493 f.
[10] *MG.*, Concil., 1, 4, c. 7; cf. also Council of Clermont (535), c. 4, ibid., 67.
[11] Ibid., 1, 77, c. xii (xi).
[12] Cf. Council of Bordeaux (663–675), cap. 2, op. cit., 1, 215, and above, 279 f.
[13] *MG.*, Capit. 1, 21, c. 3.

have been greatly extended, but at the same time all the dangers to the Church which already existed in the *Eigenkirchenrecht* must have increased.[1] The *Eigenkirchenrecht* was certainly immensely important in the development of feudalism, but it was not the only important factor nor was its influence a direct one. The development of the feudal fief is not to be thought of as specifically German; its close connection with the Roman *patrocinium* and the Germanic *munt* is clear.[2] It is evident that *beneficia* are not to be found only in *Eigenkirchen*.[3] The very relationships of *patrocinium* and *mundeburd* serve as a bridge leading from the old clerical *precaria* to the later *beneficia*. Thus the path which seemed unattainable to Stutz is opened up. For the conciliar decrees quoted above prove that the *beneficium* was apparently the remuneration for the discharging of an office, actually a fief of a property pertaining to an office in a church, and consequently the discharge of the office is not to be regarded as a feudal service, done in accordance with *Eigenkirchenrecht* in return for the fief of the Church itself and its appurtenances. A preferable view is that the *Eigenkirchenrecht* is in many ways the consequence and not the cause of the system of *beneficia*, since the territorial lords often obtained power over the clergy only when these placed themselves under their *patrocinium* (or *mundeburd*), whereupon they extended that power unlawfully to the churches where these clergy held office. This is sufficient explanation of the fact that in the eighth and ninth centuries the *Eigenkirchenrecht*, or, as it might be expressed more cautiously, the claim of secular lords to Church property or to the income derived from it, came to the fore everywhere.[4]

This conception of the origin of the feudal system explains various other facts which are found in Carolingian times,[5] more especially the circumstance that *beneficia* were not granted as we might expect only for service in the army and in battle. We can now assign the great number of *beneficia* granted solely for economic reasons to their proper place, for these until now have been too little considered.

The variety of uses to which the *beneficium* was put reflects the variety of its origins. If the fief really came from the combination of two hitherto separate legal institutions, *vassalitium* and *beneficium*, and if this combination did not come into existence till the Carolingian period, then from that time onwards far greater divergences from the preceding line of development ought to become obvious. As a matter of fact, however, the richest Carolingian sources reveal a state of affairs very similar to that of the earlier period and on closer inspection a direct continuation of it. The name for the fief shows this process very clearly. There is no new term for it; but the old "beneficium" is still used although it expresses only one of the component parts which are supposed hitherto to have been separate. Though *precaria* and *beneficium* continue to be closely connected, they do not coincide, and to some extent they draw apart.[6] Moreover, the assumption that the expression "precaria" was avoided in royal *beneficia* has been proved to be incorrect.[7] Of course the new kingdom, with its increased military and economic needs, gave rise to a richer development of the old forms.

[1] See above, 259 ff.
[2] See above, 279.
[3] Friedberg, op. cit., 594, note 24.
[4] G. Stutz, art. "Eigenkirche," op. cit., 5.
[5] This is discussed in detail in *Die Wirtschaftsentwicklung der Karolingerzeit*, 1^2, 227 ff.
[6] See my remarks, ibid., 1^2, 230.
[7] Cf. ibid., 1^2, 196 f., and following this Haff, "Die königlichen Prekarien im Capitulare Ambrosianum," *Zeitschr. d. Savigny-Stiftung f. RG.*, 33, 453 ff.

The continual growth of landed property, the development of more and more great estates, and, above all, the increasing wealth of the Church, created new possibilities for the extension of the feudal system. In the course of the ninth century, it reached ever greater dimensions owing to political developments, the fall of the central power and the accumulation of private rights of authority by means of immunities.

Thus, that which collectively we call the feudal system finally emerged out of various elements. It must not be forgotten that the settlement of German peoples as free *laeti* on Roman soil, which the Emperor granted to them in return for the duty of military service, had already led to relationships which were described as " beneficia " and were actually very similar.[1] The *terrae laeticae* also could not be alienated and were granted for the period of service. The *Constitutio* of the Emperor Honorius (399) makes this clear. Its text [2] also indicates that the acquisition of land by *laeti* was described as *merere*, the same word which is later the technical term for the acquisition of a fief.[3] Moreover, the Roman *agrimensores* use it in the form which is frequently found later on, i.e. *bene meruerunt*.[4]

Thus here also the Roman foundation is the starting-point of development. Changing conditions, on the one hand German settlements for military purposes, on the other hand the expansion of the Church, caused it to readapt itself to meet new needs and interests. But it was the Germans who built up their military organization to meet the new demands made on their national institutions by external foes, on the basis of the old rights of the following, and with the help of the rich lands of the Church, which placed itself under the protection of the king and the lords.

In my opinion, however, the whole development is neither peculiarly, German nor even purely Frankish. The latest research into the papyri makes it clear [5] that the late Roman period saw a feudalization of public authority. In the Byzantine Empire there was a contemporary development, by which land was granted as part of the equipment of hired soldiers (*στρᾶτιωτῖκὰ κτήματα* and *στρᾶτιωτοτόπια*) which has long been recognized as similar to the Western practice.[6] Farther south, too, in the early medieval Arab Empires practices such as the inalienability of Church property (*wakf*) and grants of it in usufruct for a limited period exist.[7] Out of similar economic precedents and political needs analogous legal institutions have arisen in all these different regions, without any possible internal connection or mutual interdependence.

The particular nature of this type of origin and development was, of course, fundamentally important in shaping the future growth of feudalism in these early medieval kingdoms. The seigneurial aristocratic principle was thereby extended, and as the central authority grew weaker these religious and secular territorial lords became more and more influential, not only politically but also economically

[1] Cf. German edit., ii[2], 340, note 237.

[2] Theodosianus, xiii, 11, 10; cf. texts quoted by Brunner, *RG.*, 1, 35, note=1[2], 54, note 13.

[3] Cf. Waitz, *VG.*, ii, 1[2], 310, note 1. *Form. Marculf.*, i, 31, *MG. FF.*, 62, and ii, 17, ibid., 87: *stipendia merere*, e.g. in Tacitus, *Annal.*, 13, 55.

[4] Cf. *Corp. Agrimens. Rom.* (ed. Thulin-Teubner), 40. Also Hyginus, ibid., 365.

[5] Cf. esp. Rostovtzeff's " Studien üb. d. röm. Colonat " in *Archiv. f. Papyrusforschung*, *Beiheft*, i (1910).

[6] Cf. Zachariä v. Lingenthal, *Gesch. d. griech.-röm. Rechts*, 3rd edit., 271 ff.

[7] Cf. v. Tornauw, " Das Eigentumsrecht nach moslemischem Rechte," *Zeitschrift d. deutsch. morgenländisch. Gesellsch.*, xxxvi, 285 ff., especially 322 ff. (1882).

and socially. Indeed, this latter development proceeded farther and farther within the narrow circle of the high feudatories, and as it proceeded it became less uniform. The results were by no means only disadvantageous, such as the depression of the ordinary freeman, for in this narrow social circle an economic transformation could take place, which could hardly have occurred within a wider area,[1] and the close connection between religious and secular landlords had economic advantages, where usually only political losses have been considered, as for instance the fact that it was the *immunitas* which finally led to the removal of the old Roman taxes. Thus it would be a mistake to ascribe only unfavourable results to the feudal system, as has mostly been done in the past.

It is true that this close connection between the religious and the secular gave rise to a great danger for the future. When, in the sixth century, the Frankish kings absorbed Church property far and wide for state purposes, there was no religious power in the Frankish Church which could stand against them. But what would happen when the Frankish Church grew out of the narrow bonds in which it was held, and found support from without? When that happened for the first time under Boniface there was at once a cry for the "reform" of the old Frankish regulations. In this reform, however, the tendency of the secular powers to become independent is manifest. The great successors of the first Arnolfing reformers of the eighth century, Pippin and Charles the Great, managed to restrain this powerful struggle to shake off the old obligations. But three hundred years later, when the Church had found a mighty ally in the new German princedoms, the central authority in Germany was overthrown by the investiture controversy.

[1] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, ii², 373 f.

Chapter X

THE DEVELOPMENT OF TOWN LIFE

NO aspect of early medieval civilization has received so little attention from social and economic historians as town life. This is chiefly due to the prevailing theory that the Roman cities had entirely perished at the time of the migrations, and that even after the migrations the Germans hesitated to settle in towns.[1] On the basis of recent archæological investigations, I have, earlier in this book, demonstrated in detail the fallacies of this theory. We saw that at an early date the Germans settled in the old Roman cities themselves. Proof of this is found in particular in the cemeteries of the early German period, and in the continuity evinced by inscriptions on tombstones, e.g. in Mainz,[2] Worms,[3] and elsewhere.

There remains to be answered the objection raised by Sombart to the theory of a continuous development. It is, he says, " thoughtless " to speak of a close connection between Roman and early medieval town life, since even where an external continuity seems apparent no sort of internal continuity of development is perceptible.[4] This is indeed a surprising statement from a scholar who has so stoutly opposed the dependence of economic history on legal history, and has stated that the former should aim at describing conditions as they actually were.[5] Research work in this field, however, has been grossly inadequate.

The methodological error, from which the dogma of the continual decline of the Roman urban system in the Frankish kingdom has suffered, has aptly been pointed out in the following passage: " Scholars again and again have confined their study to the one or two Roman cities in Germany and have naturally found no proofs there of a continuance of Roman methods; we, in Germany, have never gone on to examine the much richer material of the West, but have tried to conceal the uncertainty of our position by proclaiming it to be the natural and scientific one. Instead of proofs, the names of those holding identical views have been invoked." [6]

The development of research has been most significant in France. There, while earlier scholars were almost all united in their belief in the continuity of Roman urban types, others declared that in the absence of reliable sources for the early development of towns in the Middle Ages nothing could be certain; a number of modern scholars have now challenged this theory.[7]

The old Roman municipal constitution was not maintained in its original form. Changes no doubt took place, but these had already started in late Roman times. Certainly there was no room for the Roman constitution in the founding of the new German kingdoms. Royal authority brought the cities, too, into

[1] See above, 70 ff.
[2] See above, 74 ff.
[3] See above, 75 ff.
[4] *Der moderne Kapitalismus*, 2nd edit., I, 145 (1916).
[5] Ibid., I, 24.
[6] E. Mayer, *Deutsche u. französ., VG.*, I, 284 f. (1899).
[7] See Germ. edit., II[2], 345 ff.

dependence and exerted a decisive influence on their government through royal agents, the *comites*. Moreover, before the establishment of German dominion, the bishop, i.e. the bearer of religious authority, enjoyed an extremely important moral and economic power in practical matters, especially over the lower classes in the city, for it was among them that Christianity found its first adherents.[1]

But were the late Roman forms of organization really lost in this decisive transformation of the municipalities from autonomous communities into towns governed by king or bishop? It is essential in the first place to draw a clear distinction between the political development or urban constitutions, which the Germans fundamentally reorganized on seigneurial lines, and their social and economic development. Even if we cannot clearly trace Roman influence in the former case, it may have been present in the latter. Its absence in one does not, by any means, involve its absence in the other. In fact, it is far more likely to have persisted in the social and economic sphere than in the constitutional sphere, where the collapse of Roman political authority hastened the process of change. Moreover, different conditions are found in different regions. In the West and the South the line of development differed from that in the East and North, as Roman influences were stronger in the former than in the latter, where German influences prevailed, owing to the difference in distribution of the population. Finally, even within the sphere of Roman influence, chronological distinctions must be made. In the earlier (Merovingian) times, traces of late Roman institutions are more apparent, then they gradually fade away and lose their earlier importance. German civilization is the progressive active element, Roman civilization is perishing and falling to pieces. The important office of the *defensor civitatis* affords especially clear evidence of this. It lasts on, like the old *curia*, the *curiales*, and *senatores*. But none of these offices can now maintain their old independent importance in face of the new powers of the count and bishop, on whom they become dependent.[2]

Moreover, even in the towns, as in the country, special lines of development are actuated by the two new factors in this evolution, i.e. Christianity and the German monarchy. The old autonomy of the people disappears, a new tendency towards rule by an aristocracy emerges and property (especially in land), as also employment in the royal service, causes the advancement of a new class. The old Roman terms are continued: *honorati*,[3] *priores*, *primi civitatis*,[4] *curiales*, *senatores*. It is noteworthy that the *possessores* appear side by side with and in the same rank as the *honorati*.[5] The continuance of this urban Roman social classification is especially marked in Spain under the Visigoths.[6] It can hardly, therefore, be maintained that the Frankish legal constitution completely ignored Roman conditions.[7]

There is a reduction in the former importance of the masses in the municipal system, just as there is in that of the common freemen in the old folk-assembly (*concilium*) and like the latter they have only a very limited right of consent, as,

[1] See above, 241 f. and 247.

[2] Correctly emphasized by Glasson, *Histoire du droit et des Institutions de la France*, ii, 386, on the basis of the documentary examples given by Raynouard, *Histoire du droit municipal en France* (1829). For Spain see the account by Dahn, *Könige*, vi², 300 ff.

[3] Gregory of Tours, *Lib. in glor. confessor*, c. 20, still knows a "civium honoratorum ordo praeclarus," *MG. SS. rer. Merov.*, i, 759.

[4] Gregory of Tours, *Hist. Franc.*, vii, 26, op. cit., 307, and *Lib. in glor. martyr*, c. 33, op. cit., 508.

[5] *MG.*, Concil., i, 18 (Adresse!) a. 517.

[6] Cf. Dahn, *Könige*, vi², 305 ff.

[7] See the *Praeceptum of King Childebert I* (511–558): "si vero ingenuus aut honoratior fortasse persona est," *MG.*, Capit. i, 3.

for example, in the election of bishops.[1] Also in public justice only a small number of magistrates (*Rachinburgen*) continue to act as judges; these are also called *boni homines*, i.e. more important and wealthier people.[2] A *pauper honoratis* was unusual in Spain.[3] The urban offices which had been filled by popular election, such as the *defensor civitatis*, are now filled by the new municipal authorities, the counts and the bishop, and are of a seigneurial type.[4]

Here we must lay more stress than has hitherto been customary on the fact that the sources from which all this information is taken are of a much later date, namely the ninth century. The Merovingian period itself reveals many more traces of Roman institutions. The existence of local continuations of the *curia* in the sixth and seventh centuries cannot be disputed,[5] moreover, the *curia* was of decisive importance at that time in urban government. In the formulary of Clermont-Ferrand, assigned by recent scholars to the middle of the eighth century, it is actually stated of the *curiales* : *vos honorati, que curas publicas agitis adsidue.*[6] In the Tours formulary of the same period, the *defensor civitas* appears *cum honoratis principalibus suis*, still entrusted with the control of the *gesta municipalia.*[7] He and the *curia* still keep the public documents (*codices public*) . he city. On the other hand, Gregory of Tours, who can be trusted to have an accurate knowledge of municipal affairs in his time, reveals in his account of the urban judicial system of the second half of the sixth century a definite link with Roman institutions.[8] This continuity is very obvious in Spanish cities in the time of the Visigoths,[9] where the towns still possessed their own property, as in the Frankish kingdom under the Merovingians.[10]

Moreover, it should not be forgotten that even the office of count was not made equal with that of the earlier *comes* till the eighth century. Gregory of Tours knows only the *comes*, and originally the two terms did not imply equal rank. Indeed, the *comites civitatum* among the Visigoths, Burgundians, and Franks may have been representatives of late Roman institutions.[11] It has been suggested that the fusion of military and civil authority, which was opposed by general regulations in the late Roman period, was completed in the kingdom of Syagrius, so that the civil power was given over to the leaders of the army, the *comites civitatis*. This single organization was then taken over by the Franks.[12] In this connection stress should be laid on a little-noticed remark of the East Roman author, Agathias (sixth century), who tells us that public institutions of the Franks have a far-reaching similarity with those of the Romans. Among these he especially mentions urban government, in such a way that we may presume a reference to the *comites civitatum.*[13] Later on the count also enjoyed financial rights, and this, I think, shows the link with Roman institutions. In Roman times we find *capitularii* as muncipal officials, for recruiting purposes and also for the collection of taxes.[14] According

[1] Cf. Hauck, *Die Bischofswahlen unter den Merowingern* (1883), 9 f.
[2] Cf. W. Sickel, "Die Entstehung des Schöffengerichtes," *Zeitschr. f. RG.*, vi, 50 ff., and above, 221 f.
[3] Cf. Dahn, Könige, vi[2], 305 ff.
[4] Brunner, *RG.*, ii, 199.
[5] Ibid.
[6] *MG. FF.*, 28, 1[b].
[7] Ibid., 136, note 3.
[8] *Lib. in glor. martyr.*, c. 33, op. cit., 508, Cf. also the formula from Tours, quoted above.
[9] Cf. Dahn, op. cit., vi[2], 303.
[10] Cf. Glasson, op. cit., ii, 387, note 7, and Dahn, op. cit., 30, note 8 (Marseilles).
[11] Brunner, *RG.*, ii, 162 f.
[12] See E. Mayer, op. cit., i, 339.
[13] *Histor.*, i, 2: Corpus SS. *Histor. byzant.*, iii, 17.
[14] E. Mayer, op. cit., 298, note 48.

to the descriptions of Gregory of Tours, the *comes* was the royal official who collected taxes in the towns and looked after the tax-roll (*capitularium in quo tributa continebantur*).[1] As at first the Roman administration of taxes persisted in the Merovingian period,[2] and wherever it was not disorganized by royal exemptions, so too the lower officials in charge of it, the *exactores*, were now placed under the counts.[3] Now it is very interesting to note the verbal coincidence between the investiture-formula of a Frankish count and a late Novella of the late Roman Empire.[4] In the former the count performs the functions which are given in the latter to the *iudices locorum*, i.e. the royal official has taken the place of (or brought into dependence on himself) the old municipal authorities. Finally, it has already been pointed out that the grant of a third of the proceeds of the taxes to the *comes civitatis*, which was usual in Frankish times, bears some resemblance to the Roman method, whereby two-thirds were given to the central government, while a third might be used by the town for its own purposes.[5] The *comes*, i.e. the official entrusted by the king with the government of the city, appears in this respect too, as having rights which originally belonged to the autonomous municipal authorities.

These considerations allow us to form a more correct estimate than has hitherto been possible of the relation borne by the authority of the counts in the cities to that of the bishops. Waitz took the view that the great power of the bishops was the first to appear, and that thereafter they voluntarily became adherents of the Frankish kings and helped them to conquer the land. Thus, the bishops were not merely confirmed in their old privileges, but also given new honours and dignities. When the Frankish rule was safe, the count received the control of all the public affairs of the town.[6] I believe that, allowing for local differences here and there, the line of development was the exact contrary of this. At the time of the Frankish conquest it is quite conceivable that it may have been to the king's interest to ensure the security of the town by giving great power to the army-leaders therein. If we read the letters from individual bishops to Frankish counts in the fifth century (e.g. Apollinaris Sidonius, or Auspicius of Toul to Arbogast of Trier),[7] the count appears quite clearly as the ruler of the city, with the bishop still dependent on him. A similar subordination of the bishop to the count of the city may be assumed from detailed accounts of their relationship in Gregory of Tours, as, for example, at Clermont where the count was putting difficulties in the way of the episcopal election,[8] or at Angoulême where the count was oppressing the Church.[9] And even if we assume that the first Frankish rulers dealt indulgently with Roman institutions,[10] Clovis nevertheless made his royal authority very obvious to the bishops.[11] Their power increased during the sixth century, in proportion as that of the monarchy declined, owing to the partition of

[1] *Hist. Franc.*, ix, 30.
[2] Cf. Dahn, "Zum merowingischen Finanzrecht." *German., Abhandl. f. Konr. Maurer*, 1893, 345 ff.
[3] Ibid., 352.
[4] *Marculf*, i, 8, *MG. FF.*, 48: *et quicquid de ipsa accione in fisci dicionibus speratur, per vosmet ipsos annis singulis nostris aerariis inferatur. Nov. Maior*, ii, § 2; *iubemus, ut . . . universa fiscalia, quae de provinciis speranda sunt, per locorum iudices inferuntur.*
[5] E. Mayer, op. cit., 303.
[6] *VG.*, ii², 58 f.
[7] See Germ. edit., i², 163 f.
[8] *Hist. Franc.*, iv, 35.
[9] Ibid., v, 36.
[10] See Germ. edit., ii², 71 f.
[11] See above, 263 f.

the kingdom and to internal disorder.[1] The saying quoted above,[2] and ascribed by Gregory of Tours to King Chilperic (561–584), that royal power has disappeared and has been transferred to the bishops in the cities, dates from the last two decades of the sixth century, when the transformation of internal government in the Frankish kingdom, which ended to the detriment of the monarchy, was in full swing. The unflattering terms in which the Bishop of Tours dares to describe Chilperic (d. 584) —*Nero nostri temporis et Herodis*[3]—show very clearly that royal power was already a thing of the past.

The bishops were able greatly to increase their power in the cities, not only because the material resources at their disposal were being continually enlarged by numerous gifts to the Church, but also because their immunities, granted and confirmed by the monarchy, made it possible for them to restrict and keep a check on the count's privileges. We have concrete examples of this in Gregory of Tours, showing how, when the counts were collecting the royal taxes in the towns, the bishop came forward to protect the town population (or rather the inhabitants of *immunitas* districts),[4] usually at the expense of the count.[5] The result of this must have been not only to increase the power and reputation of the bishops, but also to induce many voluntarily to seek their protection. Such differentiation must have made it appear unfair that one section of the people rather than another should bear the brunt of these taxes. Perhaps it was for this reason that in the end the king usually let off also those townsfolk who were not already exempt.[6] Here we can already see how some departments of the urban administration came gradually into the hands of the bishops. King Dagobert (in the seventh century) had given all fiscal revenue in the town to the episcopal Church of Tours. Thereafter the bishop appointed a collector who, in this respect, took over the rights of the count.[7] Finally, episcopal power in the towns must have been enhanced by the king's frequent practice of bestowing bishoprics on the higher officials of state or court in their old age.[8] Good use could thus be made of their knowledge of government affairs and their personal connection with the court in the administration of the bishopric.

These proceedings are even more apparent among the Visigoths than among the Franks. Among the latter also the king appointed counts to be at the head of the government in the towns.[9] They also enjoyed military as well as civil power. Below them there were the *executores* and *actores*,[10] and the *iudex civitatis*,[11] i.e. the officials of finance and of justice. These Gothic counts originally ranked far above the bishops. The persistence of religious controversy gave rise to numerous deeds of violence against the latter, and the dependence of the bishop on the Gothic *comes* is clear from Gregory of Tours' blunt story about the brutal treatment of Bishop Leo of Agde by the heretic Gomachar.[12] This state of affairs underwent a remarkable change after King Reccared's conversion to Catholicism (587). Episcopal power in Spain increased rapidly. In certain cities bishoprics became to

[1] See above, 198 ff., 264 ff.
[2] See above, 264.
[3] *Hist. Franc.*, vi, 46.
[4] This is seen from the wording of the passages quoted by Waitz from the sources, *VG.*, ii, 2^3, 264 f.
[5] Cf. Waitz, op. cit. So also at the appointment of bishops. Gregory of Tours, *Hist. Franc.*, iv, 35.
[6] Cf. what Gregory of Tours tells us about conditions in his town; ibid., ix, 30.
[7] Cf. Loening, op. cit., ii, 270 f.
[8] Cf. Waitz, *VG.*, ii, 2^3, 62.
[9] Dahn, *Könige*, vi^2, 329.
[10] Ibid., 353.
[11] Ibid., 331.
[12] *Lib. in gloria martyr.*, c. 78, op. cit., 541.

some extent hereditary among rich families.[1] Moreover, nobles in the state service were made bishops by the king.[2] The fourth Council of Toledo (633) attacks the prevalent abuses in the attainment of episcopal office, and indicates as a special evil the practice of bestowing it upon men who were entirely given up to the secular service of the state (*saeculari militiae dediti*).[3]

Since, in Spain, the monarchy was not hereditary and was forced to rely on the bishops in its struggles with the powerful nobility, the former became more and more influential especially in the towns. The fourth Council of Toledo (633) acknowledged their right to complain to the king against unjust oppression from public justice and from the *potentes* (c. 32). Kings Kindasvint and Reccesvind (641–652 or 672), modelling themselves upon Justinian's law, granted to the bishops in civil lawsuits the right of intercession against the judgment of the *comes civitatis*, in so far as that appeared suspicious, i.e. unjust.[4] Earlier scholars assume that this judicial activity of the bishops was limited to matters connected with the poor; but it has been shown that *pauperes* does not here mean poor people, but the great mass of the population, as contrasted with the *potentes*, who ruled and exploited them.[5] We see how the bishop finally rose superior to the *comes civitatis*. For though, under Kindasvint's laws, the judges said to be suspicious were still to deal with the case in conjunction with the bishop, and both were to give judgment, after Reccesvind's time it was the bishop alone who had the right to give judgments. Thus, from Kindasvint's time onwards, the bishops were raised to a position of control over secular officials. It can easily be imagined how this affected their position in the towns, because the Council of Tours (567) directed that in cases of oppression of the poor by the *iudices* and *potentes* the bishop should examine the latter and should excommunicate them if they were insubordinate.[6] It has been assumed that this development was the result of Frankish influence.[7] I do not believe that such influence is at work here. I am more inclined to think that the after-effects of earlier Roman conditions were making themselves felt. Zeumer has already drawn attention to the *praeceptio Clotharii* of 588–628,[8] which tallies with this conciliar decree, upon which, indeed, he assumed that it was based. But it seems more probable that both share a common Roman source, since the wording of this *praeceptio* is partly derived from a *constitutio* of Valentinian III.[9] My suggestion is consistent with the general character of Visigothic law, which, as is well known, is largely based on Roman precedents. On the other hand, the bishops in the Frankish kingdom under the Merovingians never acquired the same legal position as they did among the Visigoths.[10] The crowning point in the power and position of the Spanish bishops was reached when the decrees of the fourth Council of Toledo (633) gave the councils the position of a general court of appeal against the judgments not only of bishops, but of secular judges and *potentes*,[11] and royal plenipotentiary powers were put at their disposal to enable them to carry out their decisions.

Probably it was merely as the result of this development that the bishops

[1] Dahn, *Könige*, vi[2], 387. [2] Ibid., 396. [3] Ibid., 397, note 6.
[4] Cf. Zeumer, in *N. Arch.*, xxiv, 79 ff.
[5] Ibid., 81. See above, 214 f., concerning the social differentiation of freemen, which confirms and supports Zeumer's statement.
[6] c. 27, *MG.*, Concil., i, 135. [7] Zeumer, op. cit., 87.
[8] *MG.*, Capit. i, 19. [9] Savigny, *Gesch. d. röm. Rechts*, ii, 96 ff.
[10] Cf. Loening, op. cit., ii, 270 ff.
[11] c. 3; cf. Dahn, op. cit., vi[2], 435 f., esp. 436, note 1.

also gained the control of finance, and in particular of the apportionment of salaries to public officials, especially the *iudices*. The third Council of Toledo (589) decided that the bishop should discuss with the *seniores* how much his province could afford to give the judges without detriment to itself.[1] Similar decrees were made at the Provincial Council of Barcelona (599) but the authenticity of these has been seriously challenged.[2]

In Italy also the Roman type of municipal government was at first largely preserved by the conservative rule of the Ostrogoths.[3] It is true that here, likewise, the earlier autonomy was to some extent sacrificed to the Gothic counts, who in certain towns were in military command, while, in other smaller ones, they are sometimes described merely as *priores*. The *defensor civitatis* and likewise the *curator* were appointed by the king on the proposal of the citizens. The *curator* ranked with the *defensor* and exercised control over the market so that the seller alone could not fix prices.[4] The *defensor* administered urban justice. The most important duties of the "magistrates" (those of the former *duumviri*) were transferred to the *defensor* and the *curator*, and they had charge of the usual business of the *curiales*.[5]

In Italy the burden of public dues weighed heavily on the *curiales*, who therefore tried in every possible way to avoid this dignity. Many lost their property thereby. The reason for their decline and inferiority to the *honorati* and *possessores* now becomes obvious.[6] Among the latter the bishops and clergy move to the first place,[7] for the bishops, although the German conquerors were Aryans, had retained their former dignity and were much revered by Theodoric the Great, who used them to distribute money and corn among the people.[8] The Count of Syracuse is requested to come to an agreement with the bishop and people of the town about the prices of goods bought and sold there.[9]

The count possessed not only military but also judicial authority, except in case of disputes among the Romans themselves.[9] He also controlled taxation and the police. Every year he had to visit the various *municipia* of his province, to hear the complaints of the people against oppression.[10] He supervised the subordinate offices of administration (*domestici* and *vice domini*), and had to keep a record of his observations in order to be able to account for his actions.[11]

Of great importance in the development of Italian urban life must have been the fact that, yfter the Ostrogothic rule was over (552–3), Italy came under the East Roman Empire, and at that time the Emperor Justinian had just enacted important laws concerning the bishops. Constantine had already recognized the wide judicial powers of the bishops, and by the eighty-sixth Novella (531) they were now adapted to the state administration of justice. The bishop was to act as the ordinary appeal court for all complaints against secular judges, and to be the legal

[1] See Dahn, op. cit., vi[2], 428, in opposition to Hefele, *Konziliengesch.*, ii, 48.
[2] By Dahn, op. cit., 390, note 1.
[3] Cf. beside the earlier work of Hegel, *Gesch. d. Städteverfassung von Italien* (1846), 109 ff., and E. Mayer, *Italien*, *VG.*, ii, 112 ff.
[4] Cf. Lieberman, *Der Curator rei publicae Philologus*, lvi, 324 (1897), and Declareuil, "Quelques problèmes d'Hist. des Institutions municipales au temps de l'empire Romain," *Nouv. Revue Hist. de droit Français et étranger*, xxxii, 28 ff., esp. 36 (1908).
[5] Hegel, op. cit., 112. [6] Ibid., 113, note 2. [7] Ibid., 98.
[8] Cassiodorus Var., ix, 5 (527), 14; xii, 27 (535–6), *MG. AA.*, 12, 271, 383.
[9] Ibid., ix, 14, op. cit., 279.
[10] Ibid., v, 14 (523–6), op. cit., 150.
[11] Ibid., op. cit., 151.

coniudex if the latter were declared by one party to be suspicious (i.e. unjust). If justice were refused by the ordinary judge, complaint was to be made to the bishop. If his intercession with the judge were without result, then the bishop was to give the plaintiff a report to take to the *princeps*.[1]

We have seen [2] that these laws of Justinian were imitated in Visigothic law. They also had an important influence on developments in Italy. In the famous *Sanctio Pragmatica* of 554 (§ 11) the publication of all Novelli relating to Italy was ordered and they were declared valid from the day of publication. In these Novelli Justinian decreed that the provincial governors should be elected from the inhabitants of the province which they were to govern, by the spiritual and secular nobles, especially the bishops. The *defensores*, whom Justinian tried to strengthen again, were now chosen by the bishop and the *primores civitatis* as well as the *possessores*; likewise the *pater civitatis* who had the administration of the civic property.[3] Financial control was exercised by the bishop and five of the most reputable citizens, to whom accounts had to be rendered annually. The bishop also supervised the judges in his province.[4] In the Emperor's view the corruption which had crept into the administration could be best prevented by the authority of the Church.

From the end of the sixth century this type of municipal government, taken over from the Romans, became less and less important; in its place the civil power was entrusted on the one hand to the bishop and on the other, owing to the external menace of the Lombards, to military officers (*tribuni*) on whom the title of *comes* was bestowed.[5] Since they were responsible for the protection of the city they, as representatives of the imperial central authority, also possessed judicial authority. In view of the danger from the Lombards it was necessary to create a new military organization within the urban population. A new class, the *milites*, the army (*exercitus*) became more conspicuous,[6] hand in hand with which the authority of the tribune over the civil administration (*tribunus et dativus*) grew as the seventh century advanced. At this time, too, the towns were affected by the influence of the forms of provincial government. At the head of the town was the *dux* or *magister militum*, a title sometimes given to the former. He appointed the lower officials, both military and civil, and summoned the peoples' councils, even those which were to elect the bishop. He held judicial power in spite of the *iudex* (civil and criminal jurisdiction), and was also the financial authority; his power extended over the whole field of public administration. So it was in Venice, Rimini, Rome, and Naples. We hear of hardly any other high civil official, and as society came by degrees to consist in the main of two groups, the clergy and the soldiers, so these two authorities, the bishop and the *dux*, became the chief rulers. We saw that even in the time of Justinian the provincial authorities (*provinciarum iudices*) were elected by the bishop and the nobles (*primates*); the exarch chose the military leader (*dux*).[7]

[1] Cf. Zeumer, in *N. Archiv.*, xxiv, 84 f.
[2] Cf. above, 308.
[3] Hegel, op. cit., 1, 137; Declareuil, op. cit., 32, 36, and Ch. Diehl, *Étude sur l'Administration Byzantine dans l'Exarchat de Ravenne* (568–751), 97 ff. (1888).
[4] Hegel, op. cit., 141.
[5] Diehl, op. cit., 112 ff.
[6] See the address of the letters of Pope Gregory I, *EP.*, vi, 46, vii, 42; *MG. EPP.*, 1, 421, 490; also Diehl, op. cit., 123.
[7] Diehl, op. cit., 148.

This development must be kept in mind if we are to understand aright conditions in the Lombard kingdom. When the Lombards conquered Italy, it was the bishops who fortified the cities in which their sees lay and provided them with ample provisions to enable them to resist their heretic foes.[1] Starting in Upper Italy and proceeding southwards, the Lombards gradually conquered some of the towns[2]; and they took over and developed the organizations which their advance had called into being. At the head of the various districts stood the *dux*, who took up his residence in the city and united judicial and military power in himself.[3] Beside him was the *gastaldio*, whose duty it was to administer property and who was invested with executive powers. He became the leading figure in urban administration, and the official posts which remained over from Roman times, such as the *curator civitatis*, were subordinate to his. Appointed by the king, he and the *dux* together controlled all official functions. In the cities there now appears a *locopositus* or *lociservator* whose position was probably identical with that of the old *defensor civitatis*.[4]

After the Edict of Rothari (643) the whole Lombard kingdom appears to have been divided into *civitates*, i.e. urban territories, which were usually coincident with the episcopal dioceses. The towns were the pivots both of public life and of the administration of these districts. They were bound to become important during the struggle against the Lombards, for they served as places of refuge for the inhabitants of the plains around them. There is no truth in the theory that the Lombards withdrew to the country and avoided the towns.[5] The nobility and the *possessores* (landowners) alike lived in the towns, which afforded favourable conditions for marketing country produce.[6] Beside the old Roman urban nobility (*curiales*) there appear the free and wealthy Lombards (*arimanni*). Together they elect the civil tribunal, which usually consists of three or four persons (*iudices*, later *scavini*) and is possibly connected with the old Roman system (*quatuorviri*).[7] The change from this to a seigneurial organization, which set in in the sixth century under East Roman rule, must now have become more strongly marked. It is not true, however, that in place of the old urban *curia* there now appeared the *curtis regia* or *ducalis* of the Lombards.[8] These are two quite different things. But the last development which took place under East Roman rule may well have been adopted by the Lombards. If the East Roman authority and ruler in the towns (the *dux* or *tribunis*) had already become somewhat independent of the central government, that would suit the new conditions very well. After the assassination of Cleph (574) there were thirty-five dukes living in the towns. The office of *gastaldio* was probably instituted because the Lombards had appropriated the rich fiscal property and now had to look after it.

At the Lombard conquest some of the bishops (notably those of Milan and Aquileia) had to flee, and others (such as those of Genoa and Grado) had to transfer

[1] See Pope Gregory I's letter to the bishop of Cagliari, *EP.*, ix, 11, 195, *MG. EPP.*, ii, 48, 183.

[2] Cf. Fedor Schneider, *D. Reichsverwaltung in Toskana v. d. Gründung des Langobardenreiches bis z. Ausgang der Staufer* (1914), 1, 10 ff.

[3] Cf. E. Mayer, *Italien. VG.*, ii, 256 ff.

[4] Ibid., 339 f.

[5] Cf. G. Salvioli, "Contributi alla storia economica d'Italia," *Giornale di scienze naturali ed econom.*, Palermo, xxiii (1901), 35 ff., esp. 40.

[6] That prices in town were higher than in the country is seen from the letter of Pope Gregory I, vii, 23 (26), *MG. EPP.*, 1, 468.

[7] E. Mayer, op. cit., 505, assumes this.

[8] Hegel, op. cit., 1, 485.

their sees elsewhere and their possessions were destroyed; but even though some bishoprics for a time disappeared,[1] the bishops succeeded in regaining their earlier position in the towns,[2] especially after the conversion of the Lombards to Catholicism in the seventh century. In some places they had, perhaps, never quite lost that position. They exercised a decisive influence in judicial and financial administration.[3] After the fall of the Lombard kingdom the Franks made no fundamental changes; the Frankish *comes* stepped into the place of the *dux*, who had been first a Roman, then a Lombard official.

The history of urban government presents a more difficult problem in German territory than in Roman lands, for while in the latter the Roman basis formed the point of departure for the new development, in the former it was as a rule lacking. Certain distinctions must, however, be made. In the West and South much of Germany was subject to the Romans; Roman rule extended to the Rhine and the Main, and in the East to the Danube.

The importance of the *limes* as a frontier barrier against German attacks soon made it necessary to build fortresses along this natural road of communication, or walls round the settlements which had already grown up along the frontier, partly for trading purposes. These fortified places served as quarters for the Roman garrisons, as at Strasburg, Mainz, and Xanten and this decided the nature of the administration from the first. They were under the authority of the military leader (*praefectus*), who had to protect the fortress as well as the surrounding territory. The subjugated land was organized in Gau-communities (*civitates*), each with a fortified centre (*vicus*). Here in the *castra* were also the granaries (*horrea*), where the necessary supply of corn was kept.[4] As in the wars of the Emperor Julian with the Germans in the fourth century, these fortified *civitates* on the Rhine from Strasburg to Nymwegen were the scenes of intense fighting, and were conquered and refortified now by one side, now by the other.[5] Thus, when the Franks attacked Gaul in 388, according to Gregory of Tours' story of Sulpicius Alexander, Cologne, Trier, Mainz, Neuss, and other fortresses on the Rhine formed the main points of Roman defence, while the open plains, described as very widely extended (*ingentes*), were deserted by the inhabitants.[6]

Besides these great *civitates* and *castra* which continued from Roman times and were never quite destroyed,[7] there were also a considerable number of smaller Roman forts and defensive works (*mansiones*), which were developed and increased, especially after the strengthening of the frontier fortification by the Emperor Commodus and again after the Alemannic invasions at the beginning of the third century.[8] They served to fortify the *limes* in case of war and were then garrisoned by small military forces. Furthermore, as recent scholars have shown, in particular in the case of the fortifications in the Eifel (Bitburg, Jünkerath),[9] they afforded protection for the dwellers in the plains, who were wont

[1] See Germ. edit., ii[3], 363, note 96.

[2] Paulus Diaconus, *Hist. Lombard*, iv, 42; cf. also J. Zeiller, *Étude sur l'arianisme en Italie*, *Mélanges d'Archéol. et d'Hist.*, xxv, 127 ff.

[3] Cf. E. Mayer, op. cit., ii, 522.

[4] Cf. Ammianus Marcellinus, xviii, 2, 3.

[5] Ibid., xviii, 2, 4–6 (359).

[6] *Hist. Franc.*, ii, 9.

[7] Cf. above, 72 ff.

[8] Cf. E. Fabricius, "Die Besitznahme Badens durch die Römer," *Neujahrsbll. d. badischen Histor. Kommission*, N.S., viii, 87 f. (1905).

[9] Cf. F. Cramer, *Die Römer, i. d. Eifel.* in *Eifelfestschrift*, 1913, 224.

to take refuge within their walls. These military stations seem, especially when situated at cross-roads, to have been intended to maintain the postal service of the state, and gave an opportunity for the development of trade and communications; at the same time they served as market places. A number of markets were held at different places along the *limes*, and this was due to the fact that at one time Roman forts existed there.[1]

Like the great fortresses on the Rhine, Main, and Danube, such as Regensburg and Passau, so also the centres of the Roman Gau-communities (*civitates*), i.e. the *vici* without municipal privileges, were the centres of trade and communications, as of public life in general. An example of this is Ladenburg on the Neckar.[2] We have already seen that Frankish Gau-names were formed from the names of these Roman *vici* (Lobden- Augst-, Nida-gau, etc.).[3] Such Gau- and folk-communities,[4] which were more or less quasi-urban centres, are probably implied in the enormous number of *civitates* which the anonymous geographer of Ravenna ascribes to the second half of the fifth century.[5] Twelve of these have not yet been identified or have disappeared, and therefore did not lead to the establishment of towns. The author apparently took down the names from a geographical map [6] so that some of them may be Gau-names.

Kornemann has shown that after the time of Constantine, while the cities (*civitates*) in the old Celtic territory originated in the Gau (*pagi*), in German territory they originated in the folk-community, whose earlier importance lapsed in favour of its centre (*vicus*), which now became a town. The old tribal territory became an urban territory, as is shown clearly by the fact that the old name of the folk was used in naming the new place. From the end of the third century these *vici* were fortified and walled round as a protection against the attacks of the barbarians.[7]

In the East, too, it has been shown [8] that a number of places in the Danube area, such as Lauriacum, Juvavum, and Cucullæ, as far as Teurnia, the chief city of Inner Noricum at that time, are sometimes called *vicus* and sometimes *oppidum* and even *urbs* and *civitas*, and were completely surrounded by walls and gates. After the reforms of Diocletian this nomenclature was given in respect not so much of the legal position of the place as of the greater or lesser extent of the settlement. Isidore of Seville actually says at the beginning of the seventh century: *oppidum autem magnitudine discrepat a vico.*[9]

At the time of Gregory of Tours (sixth century) fortifications or walls were a characteristic feature of towns, not only in Italy, for which we have the testimony of Ammianus Marcellinus concerning Aquileia in 361,[10] and Southern Gaul,[11] but

[1] Hammeran, "Limesstudien," in *Westd. Zeitschr.*, xv, 58 f.

[2] See above, 75 f.

[3] Cf. above, 110.

[4] Cf. K. Schumacher, *Siedelungs- u. Kulturgesch. d. Rheinlande*, ii, 212 ff. (1923).

[5] Edited by Pinder and Parthey, 227; reprinted by Riese, *Das Rheinische Germanien i. d. antiken Literatur* (1892), 409. Cf. also Germ. edit., ii², 366.

[6] Cf. also K. Weller, "Die Besiedelung des Alemannenlandes, Württemberg," *Vierteljahrshefte f. Landesgesch.*, vii, 321 f. (1898) and especially L. Wirtz, *Franken und Alemannen i. d. Rheinlanden bis z. J. 496*, in *Bonn. Jhb.*, cxxii, 220 ff. (1912).

[7] *Zur Stadtentstehung in d. ehem. keltischen u. germanischen Gebieten d. Römerreiches*, 1898. Also K. Schumacher, *Deutsche Lit. Ztg.*, 1899, Sp. 192.

[8] J. Jung, *Römer und Romanen i. d. Donauländern*, 2nd edit., 158.

[9] *Etymologiæ*, xv, 2, 6.

[10] xxi, 11, 2, 3: "murisque circumdatam validis . . . et obseratis aditibus turribusque armatis et propugnaculis."

[11] Gregory of Tours, *Hist. Franc.*, iv, 30; vi, 1; vi, 11; iv, 16, 35; v, 33; ii, 37; vi, 21.

also in the north.[1] Gregory makes a very significant remark at the end of his description of the great fortifications of Dijon: *qui cur non civitas dicta sit, ignoro*,[2] for Dijon was then not yet an episcopal see and is always called a "castrum" by Gregory himself. The fortification and walling of the towns was not intended merely to protect the town and its inhabitants against attacks from without, but also to provide a refuge for the inhabitants of the surrounding district in case of threats of war. This is repeatedly emphasized by Gregory of Tours—most clearly where he speaks of the prophecy of the hermit Hospicius near Nizza, that the Lombards would invade the country and destroy seven towns of Gaul. He advises the country people to flee within the walls with all their goods and seek safety in fortified places.[3] We have similar information concerning King Chilperic, who goes with his treasures and goods into the fort of Cambrai when he is attacked by his brother Guntchramn and his nephew Childebert.[4]

In the case of towns which had existed from Roman times, removal of the actual settlement and dwellings sometimes took place. The old Roman town sites were often very extensive. If they were partially destroyed by German attacks, and if the population returned during the transition period, it is obvious that they would not be fully inhabited. Here and there the old walls were used to build forts on the site of the old town. This happened in the south of France, e.g. at Nîmes and Montpellier.[5] The same is seen in Trier, which later lost the great importance which it had enjoyed in the Roman period as the residence of the provincial governor.[6] Within the old Roman walls and the underground chambers of amphitheatres, etc., the first Christians held their meetings and set up chapels, as excavations in Trier and Metz have shown.[7] In Metz the first Christian Church stood inside the old amphitheatre. In other places Christian churches were erected on the sites of temples, as in Mainz and Regensburg.[8]

Now that the Church, and especially the bishops, received grants of land from the kings on the sites of old Roman cities, ecclesiastical property was bound, in the course of time, to become very important by reason of the immunity privileges which it enjoyed. These episcopal *immunitas* districts (*mundtaten*) were walled round,[9] and gradually became as specially favoured as the old walled town, which fell into ruins. The later town often lay at a short distance from the old Roman town or the fort which had arisen within it.[10] Not only political but also natural conditions determined such moves. Often where there was a high town (*castrum superius*) (Hochburg) as in Salzburg, the residential district below, i.e. the *oppidum* or "suburb", was the determining factor in settling the new site of the town, because in the interests of trade it was naturally necessary to avoid difficult conditions of transport. On this subject, the account of Passau in the *Vita Severini* is very interesting. He relates that the inhabitants of the *locus Boiotrum*, which lay *extra muros oppidi Batavini* on the other side of the Inn, traded on the site of the present Innstadt.[11] Even as early as the fifth century suburbs of this

[1] Ibid., vi, 31; vi, 41.
[2] Ibid., iii, 19.
[3] Ibid., vi, 6.
[4] Ibid., vi, 41.
[5] Cf. Flach, *Les origines de l'ancienne France*, ii, 255 ff.
[6] Renard in *Mitteil. d. Rhein. Ver. f. Denkmalspflege*, vi, 91, and Kentenich, *Gesch. v. Trier*, 1915.
[7] See above, 74 and 76.
[8] Ibid., 74 and 80 f.
[9] Cf. S. Rietschel, *Das Burggrafenamt i. d. deutschen Städten*, 65, 76, 78, 106, 277, 294.
[10] Ibid., 205 ff. Th. Ilgen, in *Westd. Zeitschr.*, xxxii, 27 f.
[11] *MG. AA.*, i, 19; c. 22, 2.

sort were likewise to be found in the East. As to the West, Waitz has used documentary evidence to demonstrate their existence, in Strasburg, Metz, and Troyes.[1] Gregory of Tours gives an example of suburban trading in Trier[2] and other eighth century examples exist for Mainz, Augsburg,[3] and Regensburg,[4] where beside the old *civitas* of the tenth century an *urbs mercatorum* is found.

What happened, however, in Inner Germany, where there had been no Roman towns? Earlier in this volume I have demonstrated the fallacy in the assumption that the territory on the other side of the *limes* was a great expanse of primeval forest and marsh, with a thin and even nomadic population.[5] Cæsar and Tacitus tell us that the Germans had towns (*oppida*) such as those, for example, among the Ubii, Batavi, Suevi, Marcomanni, and Quadi.[6] These may in part, as in Britain, have been fortified dwelling-places which were not continuously inhabited but served the surrounding population as places of refuge in case of menace. In this period, after the migrations and battles for permanent settlements were over, when the Germans settled in definite districts, these *oppida* were bound to gain in importance. Moreover, according to Ptolemy there were here a number of πόλεις which served mainly as stopping places on the great trade routes through those districts, by which merchants used to bring amber, salt, etc., into the Roman Empire.[7] Besides these Tacitus often mentions *vici* in a sense which includes something more than villages in the modern sense. It is only necessary to recall what Tacitus tells us of the jurisdiction by the *principes* who *per pagos vicosque ius reddunt*.[8] These *vici* were clearly larger settlements within the Gau, where courts of justice were held; they were the centres of the communities which originally carried on public administration at the *concilium* or folk-assembly.[9] On the other hand, there was also within each Gau a *burg* or stronghold; for archæologists have found both forts of refuge (*Fluchtburgen*) and residential forts or folk strongholds (*Volksburgen*) not only in Saxon territory,[10] but also in Hessen,[11] and elsewhere.[12]

We know to-day that even in the time of Tacitus "manorial" estates existed among the Germans. What he tells us of the position of the *principes* and the German *comitatus*,[13] and what we have already learnt concerning the importance of the nobility at that time,[14] make it obvious that in very early times lords' seats and noble *burgs* were in existence.

The results of archæological research prove this clearly.[15] Schuchhardt has traced the origin of the town of Hanover to the old Frankish forts of refuge[16]

[1] *VG.*, ii, i[3], 416, note 1. [2] Rietschel, *Civitas*, 61, 62.
[3] Cf. Keussen u. Hanssen, *Topographie der Stadt Köln*, 1, 56* ff.
[4] Cf. S. Rietschel in *N. Arch.*, xxix, 643 ff.
[5] See above, 30 and 32.
[6] S. Rietschel, *Civitas*, 99, has collected documentary evidence for this.
[7] Cf. a. Gnirs, *D. östl. Germanien u. s. Verkehrswege i. d. Darstellung d. Ptolemäus* (*Prager Stud a. d. Geb. d. Gesch.-Wiss.*, iv), 9 f. (1898), and L. Schmidt, "Z. Germania d. Ptolemäus," *Hist. Vierteljahrschr.*, v, 79 (1902).
[8] See above, 170.
[9] See above, 170. Also Schumacher, *Siedelungs- u. Kulturgeschichte d. Rheinlande*, ii, 215 (1923), who regards them as "Kreishauptstadte" of the *pagi*.
[10] See above, 124.
[11] Cf. *D. Katalog. d. röm.-germ. Zentralmus. Mainz*, No. 5, 165, No. 274.
[12] Cf. Germ. edit., ii[2], 371 f.
[13] See above, 171 ff., and Germ. edit. ii[2], 43 ff.
[14] Ibid., 172 ff.
[15] Cf. above 57 ff.
[16] "Über d. Ursprung d. Stadt Hannover," *Zeitschr. d. Histor. Ver. f. Niedersachsen*, 1903, 1 ff.

although it does not appear under this name till the beginning of the eleventh century. He explains that because of natural conditions of the soil and the lie of the land (*hohes Ufer*) we may take it for granted that a *burg* stood where the *Leinestrasse* crossed the high road going east from Minden,[1] as did many others in those old Saxon districts. Of course, much of this is still conjecture. But it should be specially noted that the oft-mentioned *Tigislege*, referred to in an imperial charter of 1013,[2] must have been close to Hanover or, indeed, inside the present town.[3] And this word means a place for the "thing" or folk-assembly. Detmold, with its old name Theot-Malli,[4] bearing the same meaning, is a clear example of a place where the people originally held their folk-assembly. Moreover, it can be no accident that near it the old Grotenburg (or Teutoburg) was situated,[5] i.e. a fort of refuge, providing here also protection for the people.

In this connection it is possible to assign their proper importance to the πόλεις of which Ptolemy describes so many in the district on the right bank of the Rhine in the second century. Even though these may not have been towns (Ptolemy probably took the names from a map), they may have been centres of Gau-communities, like the *civitates* of the anonymous geographer of Ravenna.[6] Moreover, Schuchhardt has shown that in ancient Greece πόλεις means the stronghold as distinguished from μότυ· the open settlement, and that the former developed into towns.[7] I have already shown that according to archæological research there may, in some of these cases, be some connection with *Gau-burgs* and rulers' residences.[8] Similarly, Langewiesche uses the results of archæological research into old Saxon folk strongholds (*Volksburgen*) and lord's strongholds (*Herrenburgen*) to identify other πόλεις[9], and reference has been made above to the finds of coins in the neighbourhood of such forts—treasure belonging to German princes or old Frankish army-leaders, who earned it in the pay of the Romans.[10] According to Schuchhardt, Quedlinburgh also is a clear example which embodies all the phases of development. There we have the so-called *Alte Burg*, the former fort of refuge, originally called Quitilinburg; at its foot lies the *curtis* Quitilinga, and opposite on the Schlossberg the *Herrenburg* of Henry I; and, finally, the whole settlement is surrounded by the town-walls and still keeps the name of the old fort of refuge and the dynastic fort, i.e. Quedlinburg. Finally, Schuchhardt describes the fortifications between the Weser and the Elbe (strongly walled-round buildings) as *Geschlechterburgen* (tribal strongholds) precursors of the *urbes*, the cities of King Henry I.[11] The latter merely made a general practice of what had been common in his Saxon territory for centuries.[12]

[1] Op. cit., 6 ff.
[2] Henry II, 256: *MG. DD.*, iii, 299.
[3] Cf. H. L. Ahrens, "Tigislege," *Jahresbericht d. I. Lyzeums zu Hannover*, 1870–1.
[4] Einhard, *Vita Karoli M.*, c. 8; cf. *Reg. Imper.* i, 263[b].
[5] Schuchhardt, *Zeitschr. d. Hist. Ver. f. Niedersachsen*, 1903, 7, and in Ilbergs *N. Jb. f. d. klass. Altertum*, xxi, 306.
[6] Recently K. Schumacher, *Germania*, iii, 78 (1919), has explained them as Gau-forts of the late La Tène period, where the residences of the chief, the "thing", and religious services were all centred. Cf. also F. Cramer, ibid., iv, 19 (1920).
[7] See above, 288 ff.
[8] Cf. *Katalog. d. röm.-germ. Zentralmus.*, Nr. 5, 165, No. 274.
[9] *Germanische Siedelungen im nordwestl. Deutschland zwischen Rhein. u. Weser.* in *Progr. d. Realgymn. zu Bünde i. W.*, 1909–1910. Cf. also A. Schulten, *Bonn. Jhb.*, 124, and (against) F. Philippi, in *Zeitschr. Westfalen.*, x (1920).
[10] See above, 125.
[11] *Atlas vorgeschichtl. Befestigungen in Niedersachsen*, xii, 9 (1916).
[12] The same author, *Zeitschr. d. Hist. Ver. f. Niedersachsen*, 1907, 87.

The correspondence between Boniface and the Pope shows that in Inner Germany, too, *oppida* and *urbes* were in existence before the beginning of the eighth century. The description sent to Zacharias of the installation of three bishops in 742 is significant. Three *oppida sive urbes* are intended for them: one is to be *in castello quod dicitur Wirzaburg*, the second *in oppido quod nominatur Buraburg*, and the third *in loco qui dicitur Erphesfurt*. As regards the last of these, Boniface adds the important remark: *qui fuit iam olim urbs paganorum rusticorum*.[1] Here, therefore, was an *urbs* which was already looked upon as an old *Volksburg* or *Gauburg*.[2] It is also significant that the Pope in his answer to Boniface (1st April, 743)[3] warns the latter to consider earnestly and carefully whether these places and the number of their inhabitants are really qualified for the installation of a bishop among them. He reminds him of the canonical regulation; *ut minime in villulas vel in modicas civitates episcopos ordinemus, ne vilescat nomen episcopi*. Obviously, therefore, these settlements were qualified, according to these lofty requirements, to serve as *civitates* in the narrower sense, i.e. as episcopal sees.

Here we must interpose what an admittedly later source (ninth century) has revealed concerning Saxon territory. The author of the *Translatio* of Saint Liborius, describing the work of conversion there, says that there are in the province hardly any *civitates*, which were according to old custom the seat of episcopal sees, but that there are places eminently suitable for such sees, where natural conditions are favourable and where there is a large population.[4] Paderborn is then mentioned as being particularly suitable; mention is made of the walls surrounding it (*moenia*), and it is added that in its Gau (*pagus*) there not only was, but for a long time had been, a large population.[5] In this we see clearly the importance of the *civitas* as a centre for the surrounding Gau and for the whole population of the district.

The lasting influence of these old German institutions is made clear by a Frankish formula of the seventh century concerning the taking of the oath of fealty by subjects (*leudesamio*). The counts are directed to collect the free Gau-associates of their district in places suitable for this purpose. Emphasis is laid on the fact that the whole population is to be summoned, Franks, Romans, and people of other nations. Places suitable for this are described as towns, villages, and burgs.[6] Here we can gain an idea of the nature of general types of settlement. There is no lack of towns, and beside them are the burgs and the *vici*—I say *vici* because the term villages hardly expresses this conception fully.[7]

Changes in the nomenclature of towns characteristically reveal the transition from the old German to the later Frankish organization of the tribes. Previously the name of the people whose centre the town was appears to have been used in the name of the town: *Civitas Nemetum* (Speier), *Civitas Wangionum* (Worms), *Civitas Mediomatricorum* (Metz), *Augusta Rauracorum* (Augst), *Augusta Vindelicorum* (Augsburg), and also *Oppidum Ubiorum*,[8] the later *Colonia Agrippinensis*

[1] *MG., Epp.*, iii, 299, No. 50.
[2] Cf. also Waitz, *VG.*, ii, 1, 416, note 1.
[3] *MG., Epp.*, iii, 302, No. 51.
[4] *MG. SS.*, iv, 150.
[5] Ibid., c. 3. K. Schumacher, *Siedelungs u. Kulturgesch.*, ii, 31 (1923).
[6] *Marculf*, 1, 40; *MG. FF.*, 68.
[7] K. Schumacher, *Siedelungs- u. Kulturgesch. d. Rheinlande*, ii, 215 (1923), regards them as *Kreishauptstädte* of the *pagi*.
[8] Tacitus, *Annal.*, xii, 27.

(Cologne). These die out early and even in the sixth century terms based on some local peculiarity are found instead of these Celtic and Roman names. Side by side with Argentorate Gregory of Tours uses the name Strateburgum, and besides Juvavum the name Salzburg appears in the sixth century. The change was, however, a conscious one, both names continued to some extent in use.[1] Here already the Latin conception *civitas* is being replaced by the German loan-word *burgus*.[2] This becomes more general in the Frankish period, so that *burgus* is used not only instead of *civitas*—besides the two cases mentioned above, there were Würzburg (earlier *Uburzis*),[3] Augsburg (*Augusta Vindelicorum*), and Aschaffenburg (*Ascafa*)—but also instead of *vicus*, cf. Bitburg (earlier *Beda vicus*),[4] and *castrum*, cf. Regensburg (earlier *Castra Regina*). While in the sixth century Crosius still interprets *burgus* as a fortified place and Isidore of Seville adopts this explanation at the beginning of the seventh century, *burgus* is already found side by side with *civitas* in a formulary of Tours, belonging to the seventh century.[5] In the ninth century the old Saxon Heliand (*c.* 830) and Otfried of Weissenburg (*c.* 868) translated the Latin *civitas* of the Gospels by "burg" without any distinction as to size.[6]

Thus in the Carolingian period this change had definitely taken place. The old centres of the population and the Gau-forts have become towns, which are named according to some local peculiarity, and which give their fortifications as a distinguishing mark in cases where the Roman name is preserved. The walling of German towns was not undertaken for the first time in the twelfth century.[7] Long before then, in the early Middle Ages, town-fortifications were built which had some connection with the Roman ones.[8] Recent excavations in Frankfurt-on-Main, for example, have shown that as early as Carolingian times the town was walled, partly in imitation of Roman practice.[9]

The term "villa" did not always mean an open place without walls, as used often to be falsely assumed. Cases are found in which documents describe the same place sometimes as *civitas*, sometimes as *castrum*, and sometimes as *villa publica*.[10] We have already seen that *vici* were walled. Further, the expression *curtis regia* or *curtis publica*, which is used for some towns in the Carolingian period (for example, Salzburg[11] and Regensburg[12]), has been wrongly understood. The assumption that *curtis* implied a single homestead, and that where it is used to describe a town only one or several homesteads in the town are meant is wrong.[13] Waitz has pointed out the more comprehensive significance of *curtis*,[13]

[1] Cf. Gregory of Tours, *Hist. Franc.*, x, 19; op. cit., 433, and for Salzburg, the so-called *Breves Notitiae* (c. 820), Salzburg, *UB.*, i, 17 f.

[2] Also E. Norden, *Die german. Urgesch. in Tacitus' Germania*, 492, note 1.

[3] Cf. J. Schnetz, "Herkunft des Namens Würzburg," *Progr. Lohr. a.M.*, 1916.

[4] It is called *Bedense castrum* in 715 in a charter of Duke Arnulf. *MG. DD.*, i, 96, No. 7.

[5] See Germ. edit., ii², 386, note 243, 387, note 246.

[6] Cf. K. Hegel, "Lateinische Wörter u. deutsche Begriffe," *N. Arch.*, xviii, 212.

[7] Rietschel, *Das Burggrafenamt*, 203, 214 f.

[8] Gerlach, *Der Entstehung. der Stadtbefest.*, 40 ff. Also K. Schumacher, *Siedelungs- u. Kulturgesch. d. Rheinlande*, ii, 169 ff. (1923).

[9] Cf. Chr. L. Thomas, "Die erste Stadtmauer von Frankfurt a.M.," *Ber. d. röm. german. Kommission*, 1904, 74 ff.

[10] So Passau; cf. *Mon. Boica*, 28ᵇ, 67, No. 85; 68, No. 86; 62, No. 76; cf. also Gerlach, op. cit., 20.

[11] Ibid., 61, No. 75: *curte publica, qui dicitur Salzpurc*; also 65, No. 81.

[12] Ibid., 68, No. 86.

[13] Keutgen, *Untersuchungen über d. Ursprung d. deutschen Stadtverfassung*, 50.

and I have collected elsewhere the relevant examples from the Carolingian period.[1] The science of the spade has taught us that the Frankish *curtis* (*regia* or *publica*) was usually fortified and walled.[2] Thus, it is understandable that this term might sometimes be used to imply a town. *Palatium* also originally meant the same as πόλις, i.e. the Burg, in Lithuanian *pilis* (from *pilti*, to pile up).[3] This agrees with the parallel administrative position which they occupied. As in the western (Roman) provinces of the Frankish kingdom, the *civitas* was the centre of the count's dominions and the seat of the count, so in other parts of the kingdom was the *curtis dominica*.[4] Schuchhardt has shown that in North-West Germany several towns later developed out of the Frankish *curtes* or fortified homesteads.[5] Thus, in Inner Germany, too, the roots of later town development are to be found in this early period. Even though there were here no towns which complied with the legal definition of a later period, a special line of development was already emerging, raising these centres of the new seigneurial administration above the numerous villages and burgs in the open country and giving them a privileged position, which must have had important social and economic repercussions.

Valuable information may be obtained about the position and economic importance of towns in this early period, by trying to determine their conditions of settlement and population. It may be safely assumed that there were many different types, and there was certainly no uniformity or similarity. In many towns, especially the larger ones, the king owned landed property, as is evident from the existence of palaces or royal residences (*palatium*). This is the case even in towns other than those in the West where *palatii* usually occur—Cologne, Metz, Coblenz, Worms, Andernach and Regensburg, Strasburg and Basel.[6] In some towns there was also a royal mint.[7] Moreover, we must assume that the king possessed other land in the towns, since we often find royal land given to the Church.[8] In the towns of the Rhineland the older churches often lay within the king's palace and were originally royal chapels.[9] The large possessions of the king in the towns were probably due to the fact that he considered himself, both there and in the country, the legal successor of the Roman *fiscus*. As early as the fourth century under the Emperor Julian, and again in the first half of the fifth century, the communal land in the Roman towns was confiscated, to enrich in part the Church, and in part the *fiscus* and the nobles.[10] When the Germans conquered these towns in the fifth and sixth centuries, and brought them into permanent dependence on themselves, the natural result of the new administration was that the kings annexed the Roman *fiscal* property.

As has been said, the Church gained considerably from these confiscations. Attempts have even been made to attribute its immense property to this source,

[1] Cf. examples in my *Wirtschaftsentwicklung der Karolingerzeit*, I, 144 ff.

[2] Cf. K. Rübel, *Die Franken*, 14 ff., and C. Schuchhardt, *Atlas vorgeschichtl. Befestigungen in Niedersachsen*, vii.

[3] Schuchhardt, *Ilbergs N. Jb.*, xxi, 308, note 2

[4] Cf. references by Waitz, *VG.*, iii, 389, who here surprisingly regards *curtis* as being a single homestead. See also Gregory of Tours, *Hist. Franc.*, viii, 36, ix, 36.

[5] *Zeitschr. d. Histor. Ver. f. Niedersachsen*, 1903, 25 f.

[6] See above, 73 ff.

[7] Prou, *Les Monnaies Mérovingiennes. Einl.*, xlviii.

[8] Cf. the collection of examples in S. Rietschel, *Civitas*, 80 f.

[9] Renard, op. cit., 89.

[10] Cf. H. Brunner, "Die Erbpacht der Formelsammlungen von Angers und Tours," *Forschungen z. Gesch. d. deutsch. u. französ. Rechts.*, 669 ff.

on the assumption that the Church in particular enriched itself at the expense of urban property in the fourth and fifth centuries.[1] But one of the important sources of ecclesiastical wealth in the towns was also the accumulation, little by little, of property transferred to it by private persons and bequeathed by the faithful. It is significant how often, according to Gregory of Tours, legacies were left to the Church in the sixth century in the towns of Gaul.[2] When the citizens of Paris saw their property threatened by King Chilperic in 584, they hastily bequeathed it to the Church.[3] In the case of Germany the earliest references in the landbooks to property held by bishops and monasteries in the towns have been collected.[4] They are very numerous, yet they do not afford even an approximately complete idea of the real condition of affairs, because the earliest sources of this type are no longer in existence.[5] In the earliest of the old Frankish formularies, the Church appears as the proprietor of tenements held in hereditary leases including also urban sites.[6] A list (possibly dating from the Carolingian period) of *areae* belonging to the monastery of Lorsch in the town of Mainz still exists, in which no fewer than forty-five are entered, with their position in streets, public squares, near gates, etc.[7]

Besides the royal and ecclesiastical property in the towns there was also a considerable amount of land owned by secular persons, not always by nobles but also by numerous freemen. This is proved on the one hand by the same western formularies (Angers and Tours), and on the other by the ecclesiastical landbooks.[8] Mention may also be made of some occasional remarks in Gregory of Tours, as for example about the property of the High Chamberlain Eberulf,[9] or the property of the *meliores natu* in Paris[10]; and also his story that during the siege of the town of Comminges (Haute Garonne) the inhabitants received their provisions from the granaries and store-rooms of a rich landowner there.[11] There can be no question of a population of dependent tenants with limited freedom in the west Frankish formularies[12]; the owners of those properties must have been freemen, some drawn from a higher rank, as we learn from the titles used to describe them (*vir* or *domnus magnificus*). They appear both as givers and receivers of land.

A striking and peculiar feature of the urban land leases (*Bodenleihe*) of that time is the separation of the ownership rights of house and land.[13] Having established this, Caro has made the suggestion that the Roman towns of Germany preserved a special law of land leases which, owing to its suitability to certain conditions, was later transferred to the newly founded towns.[14] "The urban emphyteosis (*Burg- und Weichbildrecht*) and the hereditary holding of the Tours formulary," he said, "are very similar." I may add that in the formulary the

[1] Hegel, *Gesch. d. Städteverfassung von Italien*, i, 73.
[2] Cf. *Hist. Franc.*, vi, 45; vii, 22; ix, 26; x, 29.
[3] Ibid., vi, 45.
[4] Rietschel, *Civitas*, 82
[5] See my remarks in *Wirtschaftsentwicklung der Karolingerzeit*, ii², 4 ff.
[6] Cf. especially *Form. Marculf.*, ii, 2; *MG. FF.*, 90.
[7] *Cod. Lauresham*, i, 5, No. 2 = 2, 346-7; also Ed. Schröder in my *Wirtschaftsentwicklung der Karolingerzeit*, i², 121 f.
[8] Cf. *Form. Andecav.*, 37.
[9] *Hist. Franc.*, vii, 22: domus inframuranea.
[10] Ibid., vi, 45.
[11] Ibid., vii, 37.
[12] Loening, *Das Kirchenrecht der Merowinger*, ii, 717 ff.; Brunner, op. cit., 663.
[13] Cf. *Form. Turon.*, 42.
[14] *Städtische Erbleihe zur Karolingerzeit*, 390.

expression *burgus* is used with *civitas* to describe the position of homesteads.[1] Actually, these forms of free hereditary tenure are the characteristic expression of the economic administration of a free population, though formerly it was thought that they owed their creation to the rise of towns in the twelfth century.[2] Thus a free landowning population was certainly already in existence at that time in the towns.[3]

Further, we must assume that in some towns at any rate there was another class of inhabitants, i.e. the soldiery. The importance (already mentioned elsewhere in this book) of the towns and burgs as places of defence against attack and also as places of refuge for the surrounding population in war time must not be forgotten. In the late Roman period we already find *milites castellani*. Germans also were employed for this purpose, especially to garrison fortified places. This fact is still so well known to Orosius (sixth century) that he actually tries to derive the name of the Burgundians from it, because they were already scattered among the *castra* in the time of Drusus and Tiberius and the forts along the *limes* were called burgs.[4] Isidore of Seville copies this passage from Orosius and speaks of *burgarii*[5]; it is, however, doubtful whether the name and the thing itself were still actually in use in Spain, or whether it was simply scholarly tradition in the archaically-minded Isidore.[6]

For the sixth century it can be proved that the counts, in charge of the government and military security of the towns, maintained their soldiery, *milites* or *viri fortiores*, whose especial duty it was to guard the gates.[7] This is also consistent with the fact that in the later Edict of Pistes (864) Charles the Bold describes the guard in the town as *antiqua consuetudo*.[8] Similar conditions are found in the towns and *castella* of the Visigoths in Southern Gaul,[9] and of the Ostrogoths and Lombards in Italy.[10] Concerning Ravenna, Apollinaris Sidonius refers to the *milites* in exactly the same way[11] as they are mentioned in later documents as regards Commacchio, Mantua, and Piacenza at the beginning of the eighth century.[12]

Finally, we must also assume that in the towns there were freemen engaged in industry and trade (merchants)[13] and I shall deal with these in the next two chapters. There must also have been a large unfree population, the tenants[14] and servants of the landowners and merchants. Certain sections of the population in the towns were made up of poor beneficiaries and receivers of alms, the *Matriculariі*. It is only recently that research has revealed the importance of this group.[15] They were, at least in part, freemen and performed the humbler services for the Church.

[1] Op. cit., *MG. FF.*, 158.
[2] See K. Lamprecht, *D.W.L.*, i, 2, 931.
[3] Also Stimming, "Die Stadt Mainz in Karol. zeit.," *Westdeutsche Zeitschrift*, 31, 145 f.
[4] *Hist.*, vii, 32.
[5] *Origines*, ix, 4.
[6] Dahn, *Könige*, vi, 313 f. *Hist.*, xvii, 8, 3; on Rübel's view that the Sallii = *castellani*, see Germ. edit., ii[2], 387 ff.
[7] Cf. Gregory of Tours, *Hist. Franc.*, v, 48, 49; vi, 45; vii, 29; ix, 36; x, 2; also iii, 18.
[8] *MG.*, Capit. ii, 322.
[9] Cf. Dahn, *Könige*, vi, 215.
[10] Cf. Hegel, *Städteverfassung*, i, 480 ff.; Diehl, *Études*, op. cit., 42, 112 ff.; L. M. Hartmann, *Untersuchungen*, 57 ff.
[11] i, 8; *MG. AA.*, 8, 13.
[12] Troya, *Cod. dipl. Longob.*, No. 480 (730), 566 (744).
[13] Cf. Stimming, op. cit., 155 ff.
[14] Cf. S. Rietschel, *Civitas*, 85 f., and Stimming, op. cit., 143 f.
[15] Cf. Keutgen, *Ämter und Zünfte* (1903), 31 f., and A. Pöschl, *Bischofsgut und Mensa Episcopalis*, 1, 105 ff. (1908), and Lesne, *Hist. de la Propriété Ecclésiastique en France*, 1, 380 ff. (1910), and K. Schaefer, *Annal. d. Histor. Ver. f. d. Nied-Rhein*, xcviii, 64, note 4.

The merchants already had their own quarter in the towns. Gregory of Tours gives a vivid picture of his own town; he describes the wanderings of a count who went round the traders' dwellings, looking for jewels, weighing silver, and examining ornaments in order to purchase them.[1] In another passage he tells of a fire in Paris prophesied by a woman, who said that a man who had set fire to all the merchants' dwellings one after the other had appeared before her in a dream.[2] The merchants' quarter appears at that time to have been situated near the outer wall of the town, in the neighbourhood of the southern gate. In various towns in Gaul, the Syrians and Jews had a special quarter.[3] This is true of Trier also, where their tombstones, belonging to the fifth century, have been found.[4] Bishop Salvianus of Marseilles tells of contemporary merchants and bands of Syrians who had almost taken possession of the chief part of every town.[5] In the Rhenish towns, such as Mainz and Worms, the Frisian merchants and traders had their own quarters in suitable positions,[6] at latest in Carolingian times and probably earlier, for their trade must have taken them to these towns long before this.[7]

Moreover, trade and commerce gave a special impetus in the towns of that period to the formation of another class of people, the hired workers. These appear fairly generally in the sources of the time, and are both free and unfree. Their connection with trade and commerce is clearly seen in the Visigothic Law, in which foreign traders and merchants from overseas are forbidden to engage hired labour from the Gothic settlements for their trade.[8] The same law also forbids the Jews in particular to keep free or unfree Christians in their protection or service, or to hire them as workers.[9] Even at that time, therefore, free journeymen were available.[10] The decrees of the Councils of Orleans (541) and Mâcon (583) show that similar conditions existed in the Frankish kingdom. Reference is made to earlier Church regulations, on the subject of unfree Christians, who are in the service of Jews in the towns; these are allowed to purchase their liberty if they do not wish to serve the Jews voluntarily.[11] The fact that the later Council formulates this right of unfree Christians to ransom themselves *seu ad ingenuitatem seu ad servitium* shows that not every service was forbidden, but only those services which deprived the Christians of personal freedom. The definition of hired labour given by Isidore of Seville in the seventh century serves to illustrate this point: *mercennarii sunt qui serviunt accepta mercede.*[12] His later comments on the subject make it clear that his explanation applies especially to heavy manual labour. It should be noticed that where he is speaking of the urban population, Isidore entitles his explanation *de civibus.* Reference may also be made to a passage in Gregory of Tours, which describes the profits derived by merchants in 585 from a famine, during which they enormously raised the prices

[1] *Hist. Franc.*, vi, 32.
[2] Ibid., viii, 33.
[3] Cf. Scheffer-Boichorst, in *Mitteil d. Inst.*, vi, 535, and Council of Mâcon (583), c. 16, *MG. Concil.*, i, 159.
[4] Scheffer-B., op. cit., 534.
[5] *De gubernatione Dei*, iv, § 69, *MG. AA.*, i, 49.
[6] *Annal. Fuldens.* for 886.
[7] Cf. below, Chapter XI, (ii) Trade.
[8] xi, 3, 3: *MG. LL.*, sect. i, t. i, 404.
[9] xii, 2, 14; op. cit., 420.
[10] Cf. also Dahn, *Bausteine*, ii, 320 ff.
[11] *MG.*, Concil., i, 94, chap. xxx. The Council of Mâcon (583) forbade (c. xvi) Christians, ever to bind themselves to a Jew in unfree service. Op. cit., 159.
[12] *Origin.* [illegible] 6; in Migne Patrol. lat., 82, 351.

of the necessaries of life (corn and wine) at the expense of the people; as a consequence of this, poor people hired themselves out to get food.[1] A Visigothic formula of the seventh century shows that economic need brought about similar conditions of service in the country.[2] In Italy, too, there were large numbers of hired labourers, among whom some were certainly freemen. The Edict of Rothari (643) has decrees concerning the *operarii* whose services may be hired.[3] Perhaps these were also the *minimi homines qui nec casas nec terras suas habent* mentioned in the summons to arms of King Luitprand (726), for they are kept back to some extent to enable them, if exempted from military duties, to perform *tres opera* weekly for the judge.[4]

What I have said about the origin of such hired labour makes it comprehensible that in England, where trade developed early, hired labourers appear in the old royal laws and their legal position is defined. They are mentioned in Ine's Laws (688–695), where they are clearly unfree.[5] They appear again in the Laws of Wihtraed (695–6).[6] In Alfred's Laws (871–899), where certain days are set free for freemen, it is added *preter servis et pauperibus operariis*; the latter are called in Anglo-Saxon *esne-wyrhtan*, unfree hired labourers. At the same time it is laid down that they have the right to dispose as they like (in alms) of their earnings on the days when they are exempt from statute labour.[7] Thus even the unfree earn wages in their free time, which they can add to their own savings.[8] Even though here it is mainly the unfree who are referred to, I cannot agree with Liebermann that *only* these are included. The Laws of Alfred, which are more clearly expressed, place the unfree and the hired labourers side by side with the freemen,[9] i.e. they distinguish between the unfree and the hired labourers. Probably, therefore, there were poor freemen who hired themselves out for heavy manual labour. Working for strangers then reduced them from the position of freemen to a station half-way between free and unfree.

On the basis of the facts we have established about conditions of settlement and population in the towns, we may now attempt a more correct estimate of their relative importance. Economic historians have been accustomed to regard them as quite unimportant in these early days, and have looked upon this period as one in which there were practically no towns. An exception was made only for the west and south. In Germany, moreover, only the old Roman towns received any consideration. In the words of Sombart: "Civilization in general was primitive and completely rural. No towns and no urban life existed in the wide territory of the Frankish emperor."[10] But a number of general principles concerning the causes and bases of urban development were advanced which applied equally to this early period.[11]

As a matter of fact, in these pre-Carolingian towns (as we have seen) besides the territorial lords there were a considerable number of other people who formed

[1] *Hist. Franc.*, vii, 45: op. cit., 322.
[2] *MG. FF.*, 591, No. 36.
[3] C. 152, *MG. LL.*, iv, 35.
[4] Ibid., 141; c. 83.
[5] C. 29, quoted in Liebermann, *Ges. d. Angelsachsen*, i, 103.
[6] C. 9, ibid., i, 13; cf. also § 11.
[7] C. 43, ibid., 79.
[8] Cf. the remarks of Liebermann under "Arbeitslohn", op. cit., ii, 288.
[9] Op.cit.: *Eallum freomonnum ðas dagas syn forgifene, buton ðeowum monnum 7 esnewyrhtum.*
[10] W. Sombart, *Der moderne Kapitalismus*, 2nd edit., i, 41 (1916).
[11] See Germ. edit., ii², 393 ff.

an important group of consumers. The two main theories which have previously been produced to explain the appearance of towns, the so-called *Landgemeinden* theory and the market theory, suffer in my opinion from the fact that they have paid too little attention to this early period and have taken into account only the later stages of development, from about the tenth century onwards. Significant objections to the market theory have been raised; merchants could not have caused the birth of towns; rather they presuppose the existence of a nucleated group of consumers.[1]

On the other hand, the kings themselves certainly did not systematically set up markets on their domains.[2] The line of development must be traced much farther back and emerged slowly and gradually out of small beginnings. We must go back to Roman and even pre-Roman Celtic and old German times to distinguish the different roots of this urban growth. The old Gau- and folk-communities were the starting point. Their centres were militarily, politically, and economically important, because, like the Roman towns in Italy and Gaul, they were the seat of government, of worship, and of trade.[3] Not only were these *civitates* the fulcrum of the military control of the country, but they also served as places of refuge for the inhabitants, which caused them to be walled round at an early stage. Moreover, they were situated at important junctions of communication, at cross-roads and along roads naturally suited for traffic. The Romans had already provided these with *castra* and fortifications. But the military and trade routes also ran by them and, indeed, were purposely laid in their direction. The Germans continued to use and maintain them, as in the case of the old Frankfurt-on-Main.[4] They must, therefore, have been important in commerce and trade in very early times; moreover, there were also markets in the centres of the Roman Gaus, the *vici*.[5]

Economic historians have underestimated the importance of the towns of this early period, chiefly because it was assumed that no trade or commerce was taking place at the time; the age was regarded as one in which a purely natural economy prevailed and in which there existed a more or less circumscribed form of domestic economy, which was self-supporting and self-sufficing. The next chapter will show how incorrect these theories are. Even during the so-called age of migrations at the end of the third century we have proof of markets in the towns of Gaul, to which the German *coloni* round about brought their farm produce for sale.[6] Regular markets (*nundinae*) are mentioned in Clermont by Apollinarius Sidonius[7]; in the earliest formularies (of Angers and Tours) *fora in civitate* are described as regular features of the town.[8] We saw that they were also to be found in the *castella* on the *limes*.[9] Moreover, Tacitus says that the Hermunduri came to the Augsburg markets for trading purposes.[10]

It is well known that the great Gallic towns of the West were centres for the whole surrounding territory (*civitates*), as regards the administration of the Gau,

[1] Sombart, op., cit., I, 175.
[2] S. Rietschel, *Markt und Stadt*, 19. See my *Wirtschaftsentwickl. d. Karol.-Zeit.*, I, 36 ff.
[3] See above, 315.
[4] See above, 75.
[5] Cf. Th. Mommsen, *Röm. Staatsrecht*, ii, 887, and E. Mayer, Zoll, "Kaufmannschaft und Markt in German." *Abhandlung f. K. Maurer*, 1893, 396, note 3.
[6] See above, 52.
[7] *MG. AA.*, viii, 97, Ep. vi, 4, also Esmein, *Mélanges d'hist. du droit* (1886), 316 ff.
[8] *MG. FF.*, xv, No. 32; 151, No. 28.
[9] See above, 313.
[10] Cf. above, 66 f.

the bishopric, and military [1] and financial [2] matters. Here were the custom-houses and mints, which produced the money necessary for trade. Here public courts of justice were held; the *mallus publicus in civitate* often occurs in documents.[3] But this is true of Gau-communities in general. Already in Celtic times they had their own places of worship,[4] and in German times the Gau-temples were to be found in the Gau-burg or near it[5]; after the introduction of Christianity they were often the centres of the new religious communities, the parishes. The Germans, who often, as the adoption of the old Gau-names shows,[6] took over these Gaus, turned them into military and judicial communities (*centena*). In their centre (*vicus*) was the *mallus publicus*; here the count not only held his court of justice but received the oath of fealty from all free subjects (*leudesamio*) and probably also recruited the men who were capable of bearing arms.

The coinage of this period reveals particularly strikingly the extraordinary importance of the *vici* of the Gau-communities in Merovingian times. A hitherto inexplicable phenomenon which has caused numismatists much trouble, viz. the fact that in the inscriptions on the coins of this period not only *civitates*, but numerous *vici* are named, and the terms *pagus* and *mallus* even appear, can now be properly cleared up.[7] The only explanation that even the greatest authority on Merovingian coins, M. Prou, could offer was that these coins must have been struck in the chief places of the *pagi*.[8] These Gau-centres,[9] like the *civitates*, were centres of trade; here economic goods, such as necessities and provisions in general, were exchanged. Here, then, we have the beginnings of a development which has been described in later towns as if it were peculiar to urban economy and hitherto unknown.[10]

Towns and town civilization did not appear for the first time in Central Europe in and after the tenth century. It has been shown that the often quoted measures of Henry I, the Saxon king, differed in no way from the customs actually in practice earlier in the Carolingian period.[11] They emerged gradually from much earlier foundations. The frontier problem and the extension of the national govermnent from time to time played an important part. The natural need of protection against attack was a primitive one, and even in Roman times it brought about the erection of *castra* and the walling of *civitates* and *vici*. It was no accident that most of the earlier towns lay along the *limes*, especially on the Rhine and Danube. When the *limes* advanced to the Main and the Rhine and Danube were connected, the Main (Frankfurt) gained in importance.[12] When later Frankish rule extended over the Rhine and the tribes on the right of the Rhine were conquered, we find that in those districts, also, the lands of the Alemanni, Saxons,

[1] Gregory of Tours always refers the levy of the count to the population not only of the towns themselves but of their territory: *Hist. Franc.*, iv, 50; v, 26; vi, 31, ; vii, 13, 42.

[2] Taxation extended also to this wider territory, ibid., ix, 30, and *Vita Austrigisili Ep. MG. SS., rer. Merov.*, iv. 200, note 2.

[3] *MG. FF.*, 211, No. 1; 463, No. 2. [4] Ad. Schulten, *Philologus*, liii, 633 ff.

[5] See Germ. edit., i[2], 115, note 79.

[6] Cf. Th. Burckhardt-Biedermann, *Die röm. Kolonie Augusta Raurica*, 45.

[7] Cf. M. Prou, *Catalogue des Monnaies françaises*, i; *Les Monn. Mérovingiennes. Einl.*, lxvi ff.

[8] Ibid., lxix.

[9] Cf. recently K. Schumacher, *Siedelungs- u. Kulturgesch. d. Rheinlande*, ii, 215 (1923).

[10] Cf. C. Bücher, *Die Entstehung der Volkswirtschaft*, 5th edit., 116 ff. (1906); 11th edit. (1919), i, 116 ff.

[11] Cf. Rodenberg, in *Mitteil d. Inst. f. österr. Gr ..'.-Forsch.*, xvii, 161 ff. Also Schuchhardt, in *Atlas vorgeschichtl. Befestigungen in Nied.-Sachsen*, xvi, 9 (1916).

[12] Cf. above, 49 ff.

Thuringians, and Bavarians, the old centres of Gau- and folk-communities became more important, especially as the spread of Christianity caused the establishment of episcopal sees. Charles the Great and the later Carolingians carried on a process which the Merovingians (especially Theudebert) had already introduced and set in motion. There followed the building of royal residences, palaces, and frontier fortifications (*Burgen*), which, like the trading stations, were clearly directly linked up with the preceding development of folk-, Gau-, and refuge-burgs, of nobles' seats, and of centres of justice and heathen worship. Like the Roman *limes* the extending frontiers of the newly-conquered territory played an important part in the development of towns, which served as centres of military protection and government for these conquests, and as trading-places for frontier commerce. The East and North became increasingly important. As in the second half of the ninth century the centre of gravity of the Frankish kingdom shifted from the West, where it had been a century earlier, so the period of the Saxon kings marked another stage in this great expansion eastward of town life. Moreover, with this change in political conditions, older towns lost their earlier importance.[1]

But this advance towards the East into Inner Germany does not mark the first appearance of town life in the German civilization of the early Middle Ages. Already in pre-Carolingian times its influence on the whole social and economic development is not to be underrated. Even though, at any rate in the German towns, there may have been no continuity with the old Roman municipal organization, nevertheless it was in this period that the foundations were laid for the development of a new organization. The king, and soon afterwards the bishops, created an urban regime which was the precursor of the great German municipal system. It was possible for the citizens to free themselves from this rule and the judicial power exercised by it, in both military and economic matters, and to attain to self-government and political independence in the later Middle Ages, the great period of the German towns. They were able to do this only because in this early period the seeds of future prosperity had been sown. Free citizens were already at this time the active elements in industry, trade, and financial enterprise.

[1] See Germ. edit., ii[2], 399.

Chapter XI

INDUSTRY AND TRADE

(1) Industry

THEORIES as to the nature and extent of industry in pre-Carolingian times are closely related to those on the decline of the Roman town and primitive German civilization after the so-called age of the migrations. This is inevitable. The logical corollary of the theory that the conflicts of the migration period caused a breach in the continuity of civilization is the theory that the Germans were mainly occupied with agricultural pursuits, and had not time to develop industries. A very minor importance was therefore attached to most industries and, owing to the influence of the manorial theory, it was assumed that they were carried on only on the great estates, in order to supply their own demand. The theory of the medieval "closed household economy" advanced by political economists [1] lent weight to these arguments. It was held that all the necessities of life were produced within the household, or within a larger but clearly defined agricultural unit, no surplus remaining for the market of which the household or estate was quite independent, save for a few articles which were not to be found in the country. Later, at the earliest in the tenth century, the growth of towns created a demand for an industry independent of the great estates, so that free manual labour was able to develop out of that which earlier was bound by the custom of the manor.[2]

The question now arises as to whether the economic and political conditions on which this theory is based really prevailed during the period in question. The views which have been widely held concerning the primitive character of German economy in pre-Carolingian times are no longer tenable, based as they are on pure theory and absolutely irreconcilable with contemporary sources. The study of pre-history has made it clear that German civilization is far older than has been supposed, and had reached an advanced stage long before the Christian era.[3] Finds attributed to the Bronze Age have led Varges to the conclusion that at that time there were professional craftsmen among the Germans turning out products intended for sale and not for personal use.[4] After the period of the migrations, however, when the Germans settled down permanently in the old Roman provinces, there is no doubt that a "pure household economy" no longer existed. The description of general social and economic conditions given earlier in this book must have made it sufficiently obvious that such a self-supporting domestic economy was not the general rule, either among the mass of common freemen, whose holdings, even at this time, were of widely different sizes, or among the great estates, the lands composing which often consisted of a number of lots scattered and intermingled with those of other landowners.[5]

[1] See especially C. Bücher, *Die Entstehung der Volkswirtschaft*, 5th edit. (1906), 92 ff., 11th edit. (1919), 1, 104 ff.

[2] For detailed discussion see Germ. edit., ii[3], 402 ff. [3] See above, 32 ff.

[4] *Der deutsche Handel von der Urzeit bis zur Entstehung des Frankenriches*, Ruhrort (1903), 17.

[5] See above, 234 f.

The whole theory of the closed household economy and the "autarchy" (i.e. self-sufficient production) of the great estate of the Middle Ages is clearly based on a very shaky foundation. Its main argument is derived from two Carolingian documents, the *Capitulare de Villis* and the plan of St. Gall. Earlier scholars were completely misled by the statement in the former that a great number of handicrafts-men were kept on royal domains. But the *Brevium Exempla* of the same period has already shown that in actual practice those regulations were not adhered to, even on the royal lands.[1] On a previous occasion, in challenging the earlier interpretation of this decree, I pointed out that c. 42 clearly shows how few of the necessary utensils were already in the possession of the domains and how they had, in fact, to be bought from outside.[2] The importance of the plan of St. Gall, in which we find quarters for numerous different industrial workers, has greatly diminished to-day, for we know that it is merely a general scheme, an ideal picture,[3] which comes nowhere near the reality.[4] The plan was never carried out and was merely an advisory document issued in connection with the Aachen Reform of 816. Moreover, it has hitherto passed unnoticed that the demand that industry should be carried on within the walls of the monastery was decidely inspired by the negative principle of the monastic rule, i.e. the desire to shut off the outside world (*claustrare*),[5] and not by the possession of positive economic resources, or any intention of producing everything "within the house".

Erroneous descriptions of conditions in the late Roman period have also helped to preserve the old "manorial" theory. In 1891 Max Weber maintained that attempts were made to render the great estates "completely independent of the state", by providing them with their own industrial workers.[6] The only passage with which he supports his theory, however, comes out of Palladius and does not in any way justify such a sweeping conclusion.[7] Since his time we have learnt more about Roman estate-management. Gummerus has shown [8] that there were no professionally trained industrial workers among the slaves on the estate. Certain persons living on the estate performed the ordinary work of carpenters and joiners and the easier crafts of wicker-working and rope-making, but the more difficult handicrafts which were required had to be undertaken by hired labour, unless the job was given out to a contractor, as was the case with house-building. Otherwise, the raw material produced on the estate was probably given to town craftsmen to be worked up. Most industrial products, however, were bought ready-made from the craftsmen and traders of the neighbourhood; as, for example, all pottery and metal wares, the finer baskets and ropes, and waggons of various kinds. Even the tunics, cloaks, and patched clothes of the slaves were not made at home; they preferred to sell raw wool and bought the clothes in Rome. Smaller landowners had no craftsmen at all of their own. Men skilled in a trade represented too great a capital investment for owners to be able to run the risk of losing them by an early death.[9]

We know to-day that Palladius relies on the earlier *Scriptores rei rusticae* and usually merely gives an extract from them. Thus, the brief information which he

[1] v. Below, *Zeitschr. f. Soz. u. WG.*, v, 129, Keutgen, *Ämter u. Zünfte*, 14.
[2] *Wirtschaftsentwicklung der Karolingerzeit*, i, 37.
[3] See my remarks in *Vierteljahrschr. f. Soz. u. WG.*, 13, 63 ff., 609 ff. (1916)
[4] Cf. Keutgen, op. cit., 34.
[5] *Wirtschaftsentwickl. d. Karol.-zeit*, ii, 173.
[6] *Röm. Agrargesch.*, 241.
[7] See Germ. edit., ii², 407, note 29.
[8] In *Klio*, supplement, v, 49.
[9] Op. cit., 68.

gives may be understood from the more detailed descriptions of Varro. From Varro we learn that it was only in order that the employees on the estate should not have to leave their regular agricultural work,[1] where an estate (*fundus*) was far from town or village, that the estate-craftsmen made the most necessary articles. Otherwise hired slaves were employed for craft-work. Travelling artisans were often used, such as doctors, fullers, and builders (*fabri*) of various kinds. The same was true also of potters, tailors, painters, and other craftsmen necessary on the estate. Most manufactured articles were bought. Only the ordinary industrial work of the estate, especially repairs, was excuted by a few craftsmen of its own.[2] There is, therefore, no question of a closed domestic economy here; these late Roman estate industries were in no sense "autarchical". On the contrary, the estates had to rely on the professional industry of the neighbouring towns for most products of this kind.

Early medieval sources paint a similar picture. The enumeration of the necessary equipment for every royal estate in the *Capitulare de Villis*[3] is the complement to the advice given by Palladius. Even those royal estates which were described as models (about 800) obviously did not possess all the necessary industrial products and—just as in Palladius—measures had to be taken to prevent the procuring of these from interfering with regularity of work on the estate. To this must be added another exhortation in the same royal decree, which impresses upon the intendant of the royal estates the necessity of keeping the tenants hard at work, so that they should not wander round the towns and markets enjoying themselves.[4] The similarity of these passages is obvious. Similar economic organizations have naturally given rise to similar interests and needs. And the inventory of various royal estates still preserved in the statistics of *c.* 817 (the so-called *Brevium exempla ad describendas res ecclesiasticas et fiscales*)[5] is also a sure testimony to the fact that here there were no trained handicraftsmen.[6]

These examples drawn from the early Carolingian period render it all the more unlikely that a self-sufficing organization existed on the great estates of the previous period. What actual examples have proved for the early medieval period, starting with the Carolingians, must likewise be true of pre-Carolingian times—namely, that the great estates did not supply themselves with necessaries, but bought them in the market.[7] A few especially typical cases may be mentioned. Gregory of Tours describes a poor wool-worker (*artifex lanariae*) who is called in to manufacture the royal stock of woollen goods.[8] Just as here in Paris, under King Charibert I (d. 567), craftsmen from outside the royal estate were at times employed to manufacture raw material produced there, so also the ecclesiastical estates did not always produce manufactured goods for themselves. There are in existence numerous seventh century royal privileges releasing monastic houses from customs duty in order that they might buy what they needed; garments for the monks are specially mentioned.[9] A formula from Marculf's

[1] Gummerus, op. cit., 69.
[2] Ibid., 93.
[3] c. 42: *MG.*, Capit. I, 87.
[4] c. 54: op. cit., 88.
[5] Ibid., 250 ff.
[6] Cf. op. cit., 255, c. 29, and my *Wirtschaftsentwicklung der Karolingerzeit*, ii, 161 f.
[7] Cf. v. Below, *Zeitschr. f. Soz. u. WG.*, v, 147 ff., and my *Wirtschaftsentwicklung d. Karolingerzeit*, ii, 169 ff.
[8] *Hist. Franc.*, iv, 26, op. cit., 161.
[9] Cf. the charter of King Clothar III in A.D. 660 for Corbie, *MG. DD.*, I, 35, No. 38. Similarly the *privilegio* granted by King Theuderich III in 681 to the monastery of St. Denis, op. cit., 46, No. 51.

collection may also be cited in this connection.[1] These documents show furthermore that manufactured goods were often brought from a great distance. Thus a Corbie charter mentions goods from markets in the South of France, and another shows that they came to St. Denis from Burgundy and Austrasia. The finer and larger industrial products in particular were made by craftsmen called in from outside, which proves that even the great estates did not maintain highly skilled workers of this type in their households. We are told that Bishop Ansbert of Rouen (684–690) summoned a number of craftsmen from various provinces to erect a monument to his predecessor, St. Audoen.[2] These were chiefly jewellers, and gold- and silver-smiths. The abbot of Wearmouth Abbey in England sent for glaziers from France to carry out the glazing of his church windows.[3]

If, therefore, even the royal and ecclesiastical estates were unable to meet their own demand for industrial products and had to buy them from outside, it must follow as a corollary that the conditions necessary for the existence of a free industry already existed, a fact which has been denied by the supporters of the manorial theory.[4] For if the great estates were not self-sufficient as regards the servants at their disposal, naturally the smaller lords and the great mass of freemen were still less so. It has been rightly emphasized that it was just these classes of the population who found it necessary to supplement their economic needs from without.[5] The assumption that they were supplied with industrial products by the manorial servants [6] is quite unconvincing in view of the fact that the latter could not even meet the lord's own needs.

The whole thesis of the manorial origin of industry really arose from the old "manorial" explanation of the origin of towns in Germany, according to which no towns were supposed to have existed throughout the whole of the pre-Carolingian period. Earlier in this book, it has been shown that many towns already existed in Germany, with markets in them and outside them, where an interchange of economic produce between town and country could take place. The assumption that the economic bases of the German organization were purely agricultural is quite incorrect.[7]

Let us now consider the causes that determined the development of industry. According to Seeliger the connection with Roman civilization and the increasing need of technically trained craftsmen brought into being a class of free craftsmen.[8] He thinks that these influences were first felt in Italy in the seventh century, and then began to spread from Roman territory farther and farther into the German north and east.

But Roman conditions did not begin to exert this influence for the first time in the seventh century. It had made itself felt already at the time of the foundation of the German kingdoms on the territory of the old Roman Empire, and probably even earlier, during the period of the migrations.[9] In connection with the Flemish wool industry, for instance, Pirenne has pointed out that the existence of the

[1] Suppl. 1, *MG. FF.*, 107.
[2] See *Vita Ansberti episc. Rotomag.*, c. 20; *MG. SS. rer. Merov.*, v, 632.
[3] Bede, *Hist. eccl.* (ed. Giles), opp. iv, 366.
[4] See Germ. edit., ii², 411, note 46.
[5] v. Below, *Zeitschr. f. Soz. u. WG.*, v, 152.
[6] Op. cit., 484. Seeliger, *Handwerk u. Hofrecht* (*Histor. Vierteljahr.*), 1913.
[7] See Germ. edit., ii², 412. [8] Seeliger, op. cit., 485.
[9] See above, 53 ff.

natural conditions necessary for pasture and sheep-farming make it probable that there was continuity of production here from late Roman times.[1] Similar facts have been established for potters,[2] locksmiths,[3] coopers,[3] tilers [4] (Strasburg !) and glaziers [3] in the districts of the Rhine and Main, and for metal workers in the Danube-lands.[5] Who, moreover, was responsible for the jewellery found in excavations, and where can the Germans have procured it ? That excellent scholar of early industrial history, M. Heyne, speaking of the German jewellery says : " Here we find work, the best of which is of a high artistic value, even by modern standards, and which helps to explode the fairy-tale of a low-grade civilization and art among the German peoples in the period of the migrations." [6] He is attacking in particular the theories of L. M. Hartmann, whose conclusions concerning the lack of culture and art among the Lombards [7] he describes as " wholly false ".[8]

Other factors, too, are in this early period behind the increasing demand and the possibilities of meeting it. Great importance has rightly been attributed to the Church from the Carolingian period onwards, particularly in the medieval episcopal towns, since it was responsible for great activity in the building of churches and chapels. But the Church is equally important in the period following upon the introduction of Christianity and its recognition as the state-religion ; indeed, in the extent of its power over economic organization in general, it was perhaps more influential then than later. The great wealth which the Church acquired through pious gifts, above all from the German kings, enabled it to build churches and equip them splendidly. It has been pointed out that the architectural development of the towns, which according to this view was the reason for their rapid rise in the eleventh century, was chiefly due to the ecclesiastical princes who ruled there. But this is already evident in the sixth century. From the accounts in Gregory of Tours,[9] and in the lives of the saints of the Merovingian period,[10] an idea can be gained of the pride of the various bishops in the equipment of their sees with magnificent buildings, and of their attempts to outshine each other. It is not true that the building industry as such was unknown in Germany in early times.[11] Not only was this industry encouraged, but also others which were needed for the internal decoration of the churches, such as joinery, carpentry, and work in metals, ivory, and jewels, together with painting [12] and bell-founding,[13] were equally demanded and prized. The making of wax candles and the glass industry were likewise stimulated,[14] for the windows of these Frankish churches were already glazed, [15] as they were among the

[1] Pirenne, " Draps de Frise ou draps de Flandre ? ", *Vierteljahrschr. f. Soz. u. WG.*, 1909.
[2] See above, 68 f.
[3] Ibid. 69.
[4] Ibid. 77 f.
[5] Ibid. 70.
[6] *Das altdeutsche Handwerk*, 55 f.
[7] *Gesch. Italiens*, ii, 1, 22 ff., 32, note 14 (1900).
[8] Op. cit., Anm. 180.
[9] Cf. *Hist. Franc.*, iv, 36 ; v, 36, 45, 46 ; x, 31 ; iii, 17.
[10] See Germ. edit., ii², 410, note 44, the *Vita Ansberti episc. Rotomag.*
[11] Ioanna-Sternegg, *D. Wirt-Gesch.* (1909).
[12] Gregory of Tours mentions a painter in the time of Clothar I (d. 561) who painted the walls of chapels and rooms ; vii, 36.
[13] See the passages quoted by H. Otte, *Glockenkunde*, 2nd edit. (1884), 9, note 2, and p. 79.
[14] Gregory of Tours (*Hist. Franc.*, viii, 10) describes a burial which was *cereorum innumerabilium ornatu.*
[15] Cf. Gregory of Tours, vii, 29 ; *effractis cellolae vitreis.*

Anglo-Saxons about A.D. 700.[1] Organs were also built.[2] Finally, it was the church which was responsible for the development of luxuries, i.e. of a surplus production exceeding both in quality and quantity the demands of immediate necessity. In spite of the assertion that there were no luxury goods at this early period, or even in Carolingian times, and that they only appeared much later,[3] we have ample documentary evidence for their existence in the pre-Carolingian period. Much of this evidence has been collected by M. Heyne[4]; a good example is to be found in the treasure which King Chilperic (561–584) himself showed to Gregory of Tours and which included a great épergne made of gold and jewels, weighing 50 pounds, which he had had made for the glory of the Frankish people.[5] Other examples might be added, for instance the monument, magnificently adorned with gold and precious stones, which Bishop Ansbert of Rouen (684–690) caused to be erected to his predecessor[6]; the decoration of the church dedicated "To the Golden Martyrs" (later St. Gereon) at Cologne, of which Gregory of Tours tell us that *admirabili opere ex musivo quodam modo deaurata resplendet*[7]; and lastly the principal church of Châlon-sur-Saône, erected by Bishop Agrœcula (d. 580), the roof of which rested on pillars and which was adorned inside with marble and mosaics.[8] There are many examples of the use of luxury silks for purposes of worship,[9] and finally it must be recalled that numerous small ornaments in gold and jewels have been found in the course of the excavations of churches.[10]

These finds also yield evidence of the rich use of gold ornaments and objects of luxury among secular lords and ladies. Just at that time the great estates were appearing, and they gave a new and considerable impulse to industry. There was, for example, the equipment of the *comitatus* with weapons and armour, of which Tacitus tells us.[11] The rise of the feudal system and the growth of vassalage must have considerably increased the demand for these, and also for the work of saddlers and harness-makers for the cavalry. Military levies and the need to equip the troops thus raised gave rise to other industries, offering employment to wheelwrights, and workers in iron and wood. It is no accident that various folk-laws also mention unfree workmen, especially metal workers (sword-cutlers), who were in the service of a great lord and were allowed on occasion to work for others.[12]

The economic organization of the secular estates created new forms of industry. Gregory of Tours tells of a case where a noble Gothic land-owner was inspired by a monastery to erect a water-mill in imitation of one which he had not been allowed to purchase from the monastery.[13] New technical inventions were made in this early period; the siege of Rome by the Goths in 536 led to the discovery of shipmills.[14]

[1] See above, 330.
[2] Cf. Heyne, *Altdeutsches Handwerk*, 197 f.
[3] See Sombart, op. cit., i, 62, note 1.
[4] *Das altdeutsche Handwerk*, 58 f.
[5] Gregory of Tours, *Hist. Franc.*, vi, 2.
[6] See above, 330.
[7] *Lib. in gloria martyr.*, c. 61; *MG. SS. rer. Merov.*, i, 530.
[8] Gregory of Tours, *Hist. Franc.*, v, 45.
[9] Scheffer-Boichorst, "Zur Gesch. d. Syrer im Abendlande," *Mitteil d. Instit.*, 6, 542.
[10] See Germ. edit., ii², 416.
[11] *Germania*, c. 14.
[12] Lex Sal., xxxv, 6; Lex Alaman., ii, 81, par. 7; Lex Burgund., x, 1–5, and xxi, 2; Lex Visigot., vii, 6, 3, 4.
[13] *Vitae patr.*, xviii, 2; *MG. SS. rer. Merov.*, i, 735.
[14] Cf. C. Koehne, *Das Recht der Mühlen*, in Gierke's *Untersuchung*, lxxi, 15 f.

Among the leading secular families there was a considerable demand for luxuries. M. Heyne has referred to the German love of ornament and their strong liking for jewels, to which protective and magic powers were attributed.[1] In the stories of Gregory of Tours and in the earlier lives of Saints there are countless examples of this. Leaving aside the extravagant outfit given by Chilperic's wife to her daughter, Rigunthis, on her Spanish marriage,[2] many very valuable treasures were in the possession of dukes and counts outside the royal family. Thus Gregory describes the wife of Duke Rauching as being loaded with costly ornaments and rare jewels, which shone in a golden glory.[3] He describes her treasures thus: *tanta in thesauris eius repperierunt, quanta nec in ipso aerarii publice registu poterant invenire.*[4] A similar account is given of the wife of Duke Guntchram-Boso.[5] The sons of the mayor of the palace, Waddo, after robbing merchants and traders, brought to the king among the customary yearly presents *balteum magnum ex auro lapidisbusque pretiosis ornatum gladiumque mirabile, cuius capulum ex gemmis Hispanis auroque dispositum erat.*[6] The fact that these annual presents usually consisted of precious metals, costly weapons, ornaments, clothes, and noble horses,[7] indicates that the givers had large stores of articles of the kind. Moreover, on the death of rich people, ornaments were placed in their graves. Gregory of Tours relates how a kinswoman of the same Duke Guntchram-Boso was buried with magnificent jewels and much gold in a church in Metz.[8] It is to this custom that we owe the numerous finds of ornaments in excavations. Although it is impossible to mention all the countless small examples,[9] special attention must be drawn to the valuables found in the grave of King Childeric (d. 481) in Tournai, and in the East to the gold recently discovered at Szilagy-Somlo, Petrianez, and Petrossa[10]; the last-named used to be described as the treasure of the Gothic King Athanaric.[11] Secular lords, too, clothed themselves in silk and purple. The father of King Clovis was buried by his kinsmen in a mantle of purple silk with gold threads.[12] In St. Germain-des-Près (near Paris) the bones of noble Franks were found in silk wrappings. In the time of Apollinaris Sidonius actors in Gaul were rewarded with gifts of silk, and in the *Lives of the Saints* we are told that St. Chlodoald and St. Eligius used to wear costly silk robes.

Thus, even at that time the conditions necessary for a free industry were present: a class of consumers existed who set up a powerful demand for industrial goods, the production of which required technical training and a high standard of technical ability, and these consumers were prepared to pay the price. Furthermore, in the towns, the centres of trade and communication, there soon appeared customers with whose demands the manorial workmen had been unable to cope. Gregory of Tours tells us that in his time (sixth century) there were public eating-houses in the towns, where waiters served strangers at their desire,[13] and

[1] *Altdeutsches Handwerk*, 56, and *Deutsche Hausaltertümer*, iii, 351.
[2] *Hist. Franc.*, vi, 45.
[3] Ibid., ix, 9.
[4] Ibid., op. cit., 366.
[5] Ibid., ix, 10.
[6] Ibid., x, 21.
[7] Cf. Waitz, *VG.*, ii, 2, 248 f.
[8] Op. cit., viii, 21.
[9] Cf. L. Lindenschmit, *Handbuch d. deutsch. Altertümskunde.*
[10] Cf. J. Hampel, *Altertümer des früh. Mittelalters in Ungarn* (1905), and J. Strzygowski, *Altai-Iran und Völkerwanderung* (1917), 55 ff.
[11] Cf. Lindenschmit, op. cit., Tables 36, 37.
[12] Examples of this and the following may be found in Scheffer-Boichorst, op. cit., 543.
[13] *Hist. Franc.*, ix, 6.

in the country there were mills owned by freemen which ground other people's corn.[1]

So here, too, the existence of free industrial craftsmen can be proved, nor was that existence confined to Roman territory and apparent for the first time in the seventh century. The Frisian Law of the ninth century is by no means the first German legal document which recognizes free manual workers. Even the goldsmiths, whom Giso, queen of the Rugii, held in close custody so that they might prepare a royal ornament for her, were not unfree,[2] as the wording of the passage in question shows quite plainly.[3] Heyne was correct in assuming that they were free Gothic artists.[4] I will not again refer to the free tailor who made clothes skilfully in Paris in the time of Gregory of Tours,[5] because, like the room-decorator of the time of Clothar I (d. 561),[6] he belonged to the West. But the pedagogue to whom the Bishop of Lisieux in the sixth century brought the boys of his town for instruction[7] was certainly a freeman, and similarly the wool-weaver mentioned above[8] was obviously not unfree, or the jealous wife of King Charibert would have found other means of checking her husband's liking for his daughter. The Life of St. Rémy mentions a free millowner.[9]

Free craftsmen existed also among the German tribes. Among these we must include the doctors who occur several times in the Edict of Rothari (643); for the honorarium which was paid to them (*merces medici*) is expressly mentioned.[10] There were also freemen in the building industry; the *magistres commacini* in the seventh century undertook contracts for new buildings and house-repairs,[11] according to a definite tariff fixed by the king; these were executed by their own workmen. Here therefore we have wandering craftsmen, and Sombart has correctly pointed out that they must be regarded as free.[12] In his opinion their chief representatives are the builders. But the hammerers referred to by Heyne[13] belong here, also, and so do the numerous mimes and jesters, of whom we hear among the Frisians even before the Frisian Law of the ninth century. Gothic singers are mentioned at the Court of Attila, and themselves composed songs in his honour.[14] The Ostrogothic King Theodoric sent a zither-player to the Frankish King Clovis in 507 for the same purpose.[15] Venantius Fortunatus speaks of such a player in his address to Lupus, Duke of Austrasia.[16] There was a mime in the retinue of the Gallic King Miro, who went to Tours (St. Martin) in 589.[17] Among the Vandals, according to Procopius, dancers,

[1] This is obvious from Lex. Sal., xxii. Also Lex. Alaman., 86, 1, *MG. LL.*, iii, 76.
[2] Op. cit., 481.
[3] *Vita Severini*, c. 8.
[4] *Altdeutsches Handwerk*, 54, n. 176. See also Th. Sommerlad, *Wirtschaftsgeschichtl. Untersuch.*, ii, 19 (1903).
[5] *De Virtutib. S. Martini*, ii, c. 58.
[6] See above, Germ. edit., ii[2], 415, note 68.
[7] Gregory of Tours, *Hist. Franc.*, vi, 36.
[8] See above, 329.
[9] *MG. SS. rer. Merov.*, iii, 307, c. 17.
[10] c. 78 ff.; *MG. LL.*, iv, 24 ff.
[11] Edict of Rothari, c. 144. See also 145; op. cit., 33.
[12] *Der moderne Kapitalismus*, 2nd edit., i, 122 (1916).
[13] *Altdeutsches Handwerk*, 126.
[14] *Hist. Graec. minor.* (ed. Dindorf), i, 317.
[15] Cassiodorus, *Var.*, ii, 41; *MG. AA.*, xii, 73.
[16] *Carmina*, vii, 8, 63; *plaudat tibi barbarus harpa. MG. AA.*, iv, 163.
[17] Gregory of Tours, *de virtutib. S. Martini*, iv, 7, op. cit., 651.

mimes, musicians, and actors were quite usual.[1] Their frequent appearance among the Franks is shown by King Childeric's (511–558) prohibition of performances by buffoons and women-dancers on feast-days.[2] Finally there is the professional swordsman of the Edict of Rothari (643).[3] The numerous coiners of Merovingian times, who, it is thought, carried on their trade as wandering workmen, deserve special attention.[4] There is much evidence that free craftsmen existed among the Lombards [5] in the eighth century. A law of King Liutprand in 720 deals with the merchants and master-craftsmen who carried on their trade, wandering both within the land and abroad.[6]

We have now sufficient examples and evidence from the sources to remove any serious doubt as to the existence of free craftsmen among the German peoples in the east. In my opinion, research into economic conditions has suffered a great deal from the influence of legal concepts, since it based its inquiries mainly on the so-called folk-laws of that early period. Because industrial craftsmen are there mentioned in decrees which refer to unfree workers, the existence of free craftsmen has been denied. Against this view it has already been shown that free craftsmen may nevertheless have existed, but that there it was unnecessary to mention them, for the simple reason that they came under the decrees concerning freemen.[7] The special mention made of manual workers among the unfree, both here and in other folk-laws, is due to the fact that they were considered to be of higher value than the rest of the masses. Their technical ability must have made their loss or injury especially serious for their owners, and that is why the latter sought to protect them by a higher fine. The *Lex Salica* and the title of the *Lex Visigothorum*, quoted earlier, make this clear. According to the former the fine for the murder of an unfree workman was higher than that for less important serfs.[8] According to the latter, if an unfree workman were injured by torture, the owner was either to receive a similar workman as compensation, or to be paid his value, as assessed by a judge or other trustworthy person.[9]

Finally, the fact that forges and mills ranked as public buildings is no proof of a lack of private workers in these crafts. Seeliger's conclusion that a public forge would otherwise have been unnecessary is hardly justified. For it is not said that the work in question is to be carried on only in this public forge or mill; there is no question of a "ban", but everyone may supply his needs where he pleases. We must not assume from this passage that the Baiuvari had no private mills and forges. The particular protection here afforded to these public industries is explained by the fact that these buildings were accessible to the public. There was a much greater danger that the raw material of the industry, which belonged to strangers, would be stolen here than in the private keeping of its owner. The passage from the Salic Law, discussed above, is an indirect proof of this. These were not communal institutions, collectively

[1] *Bell. Vandal.*, ii, 6.
[2] *MG.*, Capit. i, 2 f.
[3] Par. 368. *MG. LL.*, iv, 85.
[4] Cf. Luschin, "Der Denar der Lex Salica," *Sitz.-Ber. d. Wiener Akad.*, clxiii, 4, 39.
[5] Cf. the instances which Schupfer has brought together in *Sitz.-Ber. d. Wiener Akad.*, xxxv, 408 ff.
[6] *MG. LL.*, iv, 115.
[7] See Germ. edit., ii[2], 423 ff.
[8] Tit. xxxv, 6; cf. also ibid., par. 3.
[9] Op. cit., 253.

owned; they belonged to individuals even though they were accessible to all.[1] In this connection attention should be paid to the *faber publice probatus* of the Alemannic Law.[2] He was not a craftsman enjoying the public approval of the community, as earlier scholars thought, but an excellent goldsmith who was generally recognized as such.[3] There is absolutely no ground for assuming that he was a manorial servant, who worked in a public building for other people as well as for his own lord.[4] Karcher's interpretation was correct; a man who is "publicly proved" is a man who works for the public.[5] He was a free craftsman who worked for the community.[6] This is also a proof that in that period the demand for industrial articles was not met by the "household economy". It is also unlikely that the serfs of a common freeman were able to supply the weapons and equipment he required, for this would have involved his keeping far more serfs than was generally possible, and they would have had to have a technical ability which they probably did not usually possess.[7] Moreover, the fact that in this early period hired labour was already widespread, is a challenge to the manorial theory. Among the Burgundians even the unfree craftsmen might with their lord's permission work on the raw materials entrusted to them by others.[8] There is also evidence of hired labour among the Visigoths.[9] Gold- and silversmiths, who were probably freemen, are especially mentioned. Moreover where unfree men were in a position to work in order to supply the demand of the public, it is no longer possible to consider manual labour as generally unfree, since economic freedom, i.e. the possibility of working for the market, already existed.[10] With this development, of which there is evidence for the fifth to the seventh centuries, industry had already passed out of the sphere of the closed household economy, since it no longer supplied the needs of the estate alone, supposing that it ever had done so.

Conditions in Italian towns in this early period are very instructive. It has been asserted that after the German conquest there was no longer any scope for craftwork, which withdrew to the seigneurial estates, where it was undertaken to supply a limited circle.[11] But this view is untenable. We have a definite account of conditions in Rome during the Ostrogothic rule. Procopius tells us that during the siege of the city in 537 most of the citizens were poor, because they were small artisans living from hand to mouth and, as they were obliged to stop work on account of the siege, they had nothing to eat.[12] His description is completed by the remark that Roman citizens took part in the fighting against the Goths; they were handicraftsmen who knew nothing of war.[13] There were therefore plenty of artisans in the city, who cannot all have been unfree. Clearly, they were working not merely for the great estates, but for the free market in the city itself.

The theory of a retrogression to a natural economy, when people fled from the towns and industry to the manorial estates, which thereupon became self-

[1] C. Koehne, "Das Recht der Mühlen" (O. Gierke's *Untersuch.*), lxxi, 18 ff. (1904).
[2] lxxiv, 5.
[3] Cf. Koehne, *Vierteljahrschr. f. Soz. u. WG.*, iv, 186 ff. (1906).
[4] Seeliger, *Handwerk und Hofrecht*, 484.
[5] *Das deutsche Goldschmiedehandwerk*, 19.
[6] Ibid., 24.
[7] See Germ. edit., ii, ii[2], 425 f.
[8] Tit. xxi. *MG. LL.*, sect. i, t. 2, 60.
[9] Lex. Visigot., vii, 6, 3, 4; *MG. LL.*, sect. i, t. 1, 310 f.
[10] Cf. v. Below, op. cit., 156.
[11] See L. M. Hartmann, *Gesch. Italiens*, i, 107.
[12] *Bell. Got.*, i, 25.
[13] c. 28.

sufficing,[1] derived its main support from the well-known decrees which the late Roman emperors directed against the removal of the *curiales* and *collegia* from the towns.[2] But it is wrong to connect these with the barbarian invasions or to regard them as the result of the latter. Rather, they were enacted as a consequence of the oppressive taxation of the Roman fiscal administration.[3] Waltzing's collection of imperial decrees makes it clear that this process had been going on for a long time, and that the Germans cannot be made responsible for it. On the contrary, as early as 376 the workers in the mines in Thrace regarded them as their rescuers from heavy oppression and actually joined them.[4] The attitude of the Ostrogothic King Theodoric shows clearly how this whole movement is to be understood. Hitherto only a negative side has been considered, i.e. the flight to the land of the *curiales* and *collegia*. But at the same time the *coloni* were running away from their Roman lords, and for the same reason. They placed themselves under the protection of the *potentes* in order to avoid the heavy military and fiscal burdens which weighed upon them. They also looked upon the Lombards as rescuers. The Roman population went over to them because they hoped for an improvement in their position.[5] Theodoric's laws were on the same lines as the late Roman laws, even with regard to the flight of the *collegia* to the land.[6] He left the fugitives to the landlords,[7] but he gave the latter the right to send their serfs elsewhere and especially to use them for services in the towns.[8] He also permitted their sale even without the land on which they were settled. The fact that they might be used in particular for urban services (*urbanis ministeriis*) shows where a demand had obviously arisen. The general tendency of these regulations was clearly favourable to the great estates. They show that it was not a question of making the latter independent of the towns, and establishing a self-sufficing economy in the country. It was not in the interests of the great estates that urban industry should cease or dwindle for there they found the market for their agricultural produce.[9] Detachment from the towns would have had a very unfavourable effect on their agrarian activities, for they produced not only what they needed for themselves, but a surplus for the market.[10]

It is very improbable that the motive for Theodoric's measures should have been to render it possible for the Goths, who had few servants, to employ these at court, in garrisons, and in the field.[11] The *urbana ministeria* are put first. We see that this is a counter-move to the flight of the *collegia*, and the Goths do not receive so much consideration as the great Roman landowners. Is this really a retrogression? This separation from the soil made it possible for the first time to employ in urban industry labour which was suited to it. Students of the subject have hitherto made a fundamental mistake in supposing that

[1] See Germ. edit., ii², 427, note 150.

[2] Cf. Waltzing, "Étude Hist. sur les corporations professionelles chez les Romains," *Mém. couronnés der Brüsseler Akad.*, L, ii, 121 ff. (1896).

[3] F. Dahn, *Gesch. d. Völkerwanderung*, ii, 123, and Waltzing, op. cit., 338 f.

[4] Ammianus Marcellinus, xxx., 6, 6.

[5] See above, 95, 98 f.

[6] Cf. Edict., c. 64, *MG. LL.*, v, 159.

[7] Ibid., c. 69.

[8] Ibid., c. 142. Cf. also the decree of the Emperor Honorius in 415, quoted by Waltzing, op. cit., 330, note 6.

[9] Cf. M. Weber, *Röm. Agrargesch.*, 277.

[10] See the discussion of trade in the second part of this chapter.

[11] L. M. Hartmann, *Gesch. Italiens*, i, 121.

the great estates were essentially opposed to the towns, and developed, as it were, at their expense. Nothing can be more preposterous than this assumption, in face of the reality. It has been shown [1] that in Italy itself the rich landlords of the time lived in the towns and had large properties there. Thus after the German conquest of Italy it was to their economic interest to maintain the connection with the country, which had existed from Roman times.

The question of the origin and growth of industry is bound up in particular with the question of the craft gilds. Did these organizations continue in their Roman form, or not? There has been some doubt as to the existence of continuity here.[2] A careful distinction must be drawn between the organization of these gilds and their economic development, and territorial differences must also be taken into account. Whenever on Roman territory a certain continuity of urban developent may be assumed, and more especially in Italy, Spain, and the South of France, there is a possibility that the gilds also had a continuous existence. This has been proved to be the case in Italy.[3] But it was not so only in Rome and Ravenna, where Roman tradition was maintained and Byzantine influence was felt. The influence of Roman organization must also have made itself felt in those districts which were conquered and settled by the Germans. In this respect no little importance must be attributed to the Church, not so much because it followed Roman law, as because in the lower classes of society, among the poorer people to whom the artisans belonged,[4] it had many early adherents and especially encouraged them to unite in common organizations.[5] In the time of the Christian persecutions an external impetus was given to this movement, but later the whole social teaching of the new faith, the doctrine that its adherents were equal and brothers in the sight of God, must have been equally stimulating. The philanthropic movement lent a helping hand. In this early period the Church became very charitable, in order to support its adherents, especially in those regions where it was opposed by the heathen or heretic (Aryan) Germans who had newly come into power. The *Vita Severini* depicts these conditions very clearly in Noricum.[6]

Among the Lombards in Italy in the seventh century artisans appear to be organized. At their head are the *magistri* (*commacini*); probably here also there were unions similar to gilds, as the expression *collegantes* appears to show.[7] Heyne concluded from this that they were organized according to the tradition of the Roman gilds.[8] In Liutprand's laws *magistri* are mentioned at the head of some industries.[9] Similarly, continuity with the *collegia* may be assumed among the Visigoths. Among various classes of urban population mentioned by Isidore of Seville at the beginning of the seventh century, the *collegiati* occur, and he allows it to appear that then, as in late Roman times, they were of small

[1] See above, 311, and Reiprich, *Die Agrikultur Italiens unter d. Herrsch der Ostgoten*, 9.

[2] Hartmann, *Gesch. Ital.*, i², 345 ff.

[3] Hartmann, "Zur Gesch. der Zünfte im frühen Mittelalter," *Zeitschr. f. Soz. u. WG.*, 3 (1894), reprinted and completed in the book by the same author: *Zur Wirtschaftsgesch. Italiens im frühen M.A.*, 1904, 61 ff.

[4] See above, 241 f.

[5] Cf. Uhlhorn, *Die Christl. Liebestätigkeit*, 1, 111 ff.

[6] c. 1, *MG. Auct.*, 1; cf. J. Jung, *Roma u. Romanen in den Donauländern*, 2nd edit. (1887), 140, and especially 150, 244.

[7] Edict of Rothari (643), c. 144. *MG. LL.*, iv, 33, cf. ibid., also: *cum consortibus suis.*

[8] *Altdeutsches Handwerk*, 71.

[9] See the law of 720, *MG. LL.*, 4, 115.

repute.[1] The associations of transport workers, who served the public traffic in the Roman period, still existed in the seventh century,[2] and it should not be forgotten that such associations of transport workers (*parafridi*) are mentioned among the earliest examples of gild organization in Germany, in the royal charters of Worms (897 and 904). These were unfree *fiscalini*.[3] In the Frankish kingdom in the sixth century also, Gregory of Tours shows that there was an organization of industries (*artificia*) according to *magisteria* or offices.[4] The various artisans, such as cloth-workers and millers, were each placed under these, and, like the Lombard builders in the Edict of Rothari, they were free workmen.[5]

However few these documentary proofs may be, they give some support to the assumption that at that time *magisterium* did not imply a merely manorial organization among either the Franks or the Lombards,[6] hence this early organization of industry according to *magisteria* affords no proof of a "manorial origin" of gilds. The documentary evidence makes it much more apparent that free artisans united for technical reasons for the management of their industry. The *collegiantes* or *consortes* of the Lombard *magistri commacini* are here especially noteworthy, since they were "wandering" artisans.[7]

(2) Trade and Commerce

The catastrophic theory of history, which held that a breach in the continuity of civilization occurred after the fall of the Roman Empire in the West, exerted a particularly decisive influence on conceptions of early medieval trade and commerce. During that time, according to the general view, there was a complete cessation of trade; the Roman roads which had served it had been laid waste, and on all sides economic activity had become isolated.[8]

Economists[9] have regarded this complete absence of any kind of exchange economy as characteristic of the period, and as having lasted until the growth of towns, a phenomenon usually assigned to the eleventh or, at the earliest, to the tenth century. Even where, by way of exception, a purely architectural connection with Rome is assumed, as far as economic activity is concerned the towns had almost completely ceased to exist. For within the town walls (where these still remained standing) there dwelt in Carolingian times, as well as in the preceding period, tillers of the soil, similar to those who lived outside in the countryside. Civilization was primitive and agrarian.[10] This was held to be true not only of lands conquered by the Germans, where the agrarian character of the new culture would be most noticeable, but also of Italy itself.

[1] *Origines*, ix, c. 6, par. 29. Migné, *Patrol. lat.*, 82, 351.
[2] Cf. Lex. Visigot., v, 4, 19, op. cit., 224.
[3] See my *Wirtschaftsentwicklung d. Karol.-zeit*, ii², 178.
[4] *Hist. Franc.*, vii, 14; op. cit., 299.
[5] See for the latter, above, 334; the artisans mentioned by Gregory were also freemen, as we see from his remark that Ballomer (Gundovald) "cuius pater molinas gobernavit", described himself as the son of King Clothar. *Hist. Franc.*, vii, 36.
[6] Eberstadt, *Der Ursprung des Zunftwesens* (1900), 93 f.; 2nd edit. (1915), 193, 217.
[7] See Germ. edit. ii², 432, note 169.
[8] See v. Inama-Sternegg, *D. Wirt.-Gesch.*, i, 233, and R. Kötzschke, *Deutsche Wirtschaftsgesch.* (in Al. Meister's *Grundriss d. Gesch.-Wiss.*, ii, 1), 77 (1908).
[9] See C. Bücher, *Die Entstehung d. Volkswirtschaft*, 5th edit. (1906), 111 ff.; 11th edit. (1919), 107 ff., especially 111 ff.
[10] Sombart, *Der moderne Kapitalismus*, 2nd edit., i, 40 ff. (1916).

For the moment I shall leave general theories aside, and shall try to discover the historical facts themselves. What do existing documents tell us of commerce and trade at this period? Is it really nonsense to conceive a continuity in these activities from classical to medieval times?[1]

First let us consider Italy. This long promontory, stretching out into the sea and separated from the continent even where it joins it by the mighty Alps, had, owing to its geographical situation, been dependent on sea communications from the earliest times. When the Germans set up their rule there, they found a highly developed maritime trade, which had already been in existence for several hundreds of years. In the new Ostrogothic kingdom there was at first no occasion for the collapse of this trade since the new rulers treated the Roman organization with extreme consideration. Theodoric's Edict makes it clear that not only did the Gothic kings make this a general principle of their home policy, but they took the same line in particular questions of trade and industry. The excise duty (*siliquaticum*) of a twenty-fourth of all marketed wares was retained; and it is significant that the chief official, the *comes siliquatariorum*, was also made overseer of the port traffic.[2] To this we must add the regulations about size and weight which are expressly declared to be binding on *negotiatores*. The royal authority ordered size and weight to be supervised by the state as represented by the *iudices*, and strenuously opposed all unfair dealing in these respects on the part of merchants and traders (*in commerciis*).[3]

It must not be forgotten that between 508 and 511 Theodoric considerably lightened the excise duty, by exempting from it a number of important foods (corn, wine, oil), with the express purpose of making available a more plentiful supply of provisions for the provinces.[4] This was intended to stimulate sales and to give an impetus to trade.[5] It is therefore impossible to represent this period as one in which free commerce was restricted. This tendency to look favourably on trade is seen elsewhere in his laws. The Gothic king also lightened the direct tax (*auraria*) paid by merchants. Not only did he exempt prominent ecclesiastical landowners from it (for instance at Milan and Ravenna),[6] but at the request of the merchants of Apulia and Calabria he made regulations with the aim of preventing trade from being too heavily burdened by official taxation.[7] Thus we see here the tendency to try to frame a definite commercial policy, an important innovation as compared with late Roman fiscalism and official oppression. The German monarchy favoured the producing classes of the population in trade and commerce, as it did also in agriculture. The king's laws for the protection of peasants are proof of this.[8] Finally, Theodoric attacked the abuses of the tax officials in the exaction of the "monopoly", a tax paid by merchants for the right to have the monopoly of certain wares. It was in future to be exacted only if the privileged persons could really reap the fruits of monopoly.[9] Like Theodoric, King Theodahad in 535-6, when there was

[1] Sombart, op. cit., I^2, 145.
[2] Cassiodorus, *Var.*, ii, 12 (507–511). *MG. AA.*, xii, 52, also Dahn, *Könige*, iii, 146, and L. M. Hartmann, op. cit., I, 113.
[3] Edict of Theodoric, c. 149, *MG. LL.*, v, 167.
[4] Cassiodorus, *Var.*, iv, 19, op. cit., 122 f.
[5] See Hartmann, op. cit., I, 113.
[6] Cassiodorus, *Var.*, ii, 30 (507–511).
[7] See the clear indication at the end, ibid., ii, 26 (507–511), op. cit., 61.
[8] See above, 216 f.
[9] Cassiodorus, *Var.*, ii, 26, op. cit.

a famine, ordered a remission of taxes in favour of provision dealers.[1] Above all, he gave security that their monopoly rights should not be taken from them without due cause by the royal officials, before the expiration of the legal period (five years). Dealers in corn, wine, cheese, meat, and hay receive special mention. We learn at the same time that they provided the great towns (Rome, Ravenna, Pavia, Piacenza, and other places) with food.

The economic policy of the Gothic kings soon produced definite results: food prices fell considerably.[2] This is the best refutation of the theory that the great seigneurial estates were of predominant importance at that time. The argument that the Goths were not as a rule great landowners, that they maintained a self-sufficing existence on the fruits of the third share which they had obtained in the land partition,[3] and therefore were not interested in high corn prices,[4] does not explain the contrast with late Roman conditions. For one thing many of the Goths were certainly considerable landowners, because it was to the king's interest for military purposes to make them economically powerful; on the other hand, the explanation also given, that it was to the interest of the Gothic state to secure as low food prices as possible for the army,[5] must likewise hold good for much earlier periods. The decisive factor was quite obviously the removal of taxation by a vigorous control of the public administration. I would especially call attention to the protection given by Theodoric to traders by means of his royal *sajones*.[6]

Moreover, the famous Pragmatic Sanction published by the Emperor Justinian for Italy after the collapse of Ostrogothic rule (554), is evidence against the theory that the great seigneurial estates occupied a dominating position in economic life. This edict has been interpreted as a reaction against the protective legislation of the Gothic kings in favour of the peasants, and as being specially favourable to the great landowners.[7] It is admittedly so, but this legislation, like the remission of debts of a few years later, must have been intended not only "to protect the landowning class", but indirectly also to penalize the no longer numerous sections of the population which still had money, merchants among them.[8] But the privileges granted to the *senatores*, in particular the permission to travel to the imperial court without hindrance to lodge their complaints in the right quarter, were granted not only to them but to all taxpayers.[9] Moreover, special mention is made of the great number of merchants at the time.[10] In fact the Pragmatic Sanction is favourable to the *negotiatores*: they are to have charge of the forced purchase (*coemptio*) of the produce (corn, etc.) which is to be delivered to the *fiscus*,[11] so that the officials shall not oppress the taxpayers by fixing prices capriciously.[12] The price is to be fixed according to the marketability of the wares, and there must be no obstacle to access to the sea.[13]

These are one and all measures which definitely contradict the idea of a one-sided or exclusively preferential treatment of the great estates at the expense

[1] Ibid., x, 28, op. cit., 315.
[2] Reiprich, "Die agrikultur Italiens unter der Herrschaft der Ostgoten," *Progr. d. Gymn. Gr.-Strehlitz* (1885), 12, and also Hartmann, op. cit., 1, 116.
[3] See above, 94.
[4] See Hartmann, op. cit.
[5] See Hartmann, op. cit.
[6] Cassiodorus, *Var.*, ii, 4, op. cit., 49.
[7] Hartmann, op. cit., i, 358 = 1², 350, and above, 216 f.
[8] Ibid., 359 f. = 1², 350.
[9] c. 27; *MG. LL.*, v, 175; see also c. 26.
[10] c. 26.
[11] Ibid., op. cit., 174.
[12] c. 18.
[13] Op. cit., 173.

of the merchants, and which indicate in particular that these estates were by no means self-sufficient as far as agricultural produce was concerned. This is borne out by the wealth of concrete evidence of active trading carried on at the same time in Italy independently of the great estates. Thus Apollinaris Sidonius in the second half of the fifth century describes Ravenna as the abode of numerous merchants, and remarks that monks and soldiers traded there also.[1] It is said of King Theodoric that merchants came to the place where he had his palace from widely varied districts because trade was especially safe there.[2] The same picture is drawn by Procopius. He tells us that at the siege of Naples by Belisarius (536) the town was provided with food by Jews. He mentions especially a Syrian, Antiochus, who had lived there and carried on maritime trade for a long time, and was much respected.[3] We hear also that from the port at the mouth of the Tiber a good road led to Rome, and that the merchants loaded their wares on to boats and had them towed to Rome by oxen.[4]

It is hardly possible to deny that considerable trade was done in Italy at that time. But this may have been afterwards destroyed by the Lombard conquest. A number of scholars [5] have suggested that not until peace was restored and international relations secured could merchants offer their wares for sale in the town markets.[6] The phenomenon of a large class of free and landless Lombard industrialists and merchants, which has been shown to have been in existence in the eighth century, is described as the end of an "immeasurably long road" travelled by the Lombards in the two hundred years of their sojourn in Italy.[7] This seigneurial theory is most unrealistic. Documents now afford proof that a much earlier development took place in Italy. The trade agreement of 730 between King Liutprand and the inhabitants of Commachio tells us, as does Apollinaris Sidonius at the end of the fifth century, of soldiers who carried on trade.[8] Still clearer is a document of King Hildeprand, relating to Piacenza (744) which confirms earlier rights of the time of King Liutprand.[9] And the trade regulations in Liutprand's Pactum of 730 refer definitely to the *antiqua consuetudo*,[10] which gives a direct and positive proof that these conditions were already prevailing in the seventh century. Passages in the laws of Lombard kings, even earlier than those of Aistulf in 750 concerning the arms or military duties of the merchants,[11] indicate the existence of a large class of traders. A law of King Liutprand as early as 720 deals with the rights of inheritance of *negotiatores* who travel within or without the land to carry on their trade; among the rest, the king's right of inheritance is fixed in cases where there are no near relatives.[12] Indeed we find traces of this in the Edict of Rothari (643), especially in the regulations about the *waregang*.[13] These are identified by N. Tamassia with foreign merchants.[14] If we compare the regulation that follows, regarding the inability of the *waregangs* to dispose freely of their own property where there are no children, with King Liutprand's law of 720 quoted above, their position

[1] *EPP., Lib.*, i, 8.
[2] *Anon. Vales.* (edit. Garthausen), xii, 72.
[3] *De Bello Gotico*, i, 8.
[4] Ibid., i, 26.
[5] See above, 95.
[6] L. M. Hartmann, op. cit., ii, 2, 4, 18, 21.
[7] See also Germ. edit., ii², 441 f.
[8] Troya, *Cod. Dipl. Longob.*, iii, 529, No. 480.
[9] Ibid., iv, 143, No. 566; cf. especially 146: *quando ibi naves militorum applicaverint ad negotiandum.*
[10] Op. cit., 530.
[11] *MG. LL.*, iv., 196.
[12] Ibid., 115.
[13] c. 367, *MG. LL.*, iv, 85.
[14] "Le fonti dell' Editto di Rotari," xv, 58, and "Stranieri ed Ebrei nell' Italia Meridionale dell' Età Romana alla Sueva," *Atti dell' R. Istituto Veneto*, lxiii, 760 ff.

appears to be parallel with that of the *negotiatores* mentioned in the latter. The royal right of inheritance in one case corresponds to the need for royal consent in the other; both limitations are obviously based on the fact that these strangers were under the king's protection.

We can therefore assume that already in the first half of the seventh century, and probably even earlier, there were numerous strangers, including merchants, in the Lombard kingdom. Schupfer has collected a number of concrete examples which prove the presence of merchants and traders among the Lombards, among these the *privilegio* granted by King Dagobert to St. Denis (629), which mentions merchants who came thither from the Lombard kingdom for the fair of St. Denis.[1] The existing form of this document is certainly not genuine,[2] but King Pippin's later confirmation (753)[3] proves that there was a genuine document of this kind.

As in Italy, so also among the Visigoths in Spain and the South of France, there were a large number of free merchants and traders in this pre-Carolingian period. The Visigothic Law contains regulations about the *negotiatores transmarini* of King Receswinth's time (649–672)[4] which N. Tamassia has compared to the Lombard *waregang*. The theory that an interruption and even destruction of Roman civilization was caused by the so-called migrations is a great exaggeration, even as regards economic life. Merchants of Carthage in the sixth century sold their wares in the palace of King Theudis, and at the end of the fifth century, in the time of Apollinaris Sidonius, African astrologers and jugglers, who displayed their talents in the port of Bordeaux, are mentioned.[5] Of especial importance is the same bishop's account of how a humble cleric (*lector*) of Clermont-Ferrand in Auvergne, bought cheaply a quantity of wares from the ships regularly plying there, for the purpose of selling them at a higher price in his home town. The difference in price enabled him not only to pay back his borrowed capital with interest, but also to make a rich profit.[6] Also, in King Dagobert's *privilegio* for St. Denis (? 629) quoted above, merchants *ex Hispania*, who came regularly to trade at the Fair of St. Denis near Paris are mentioned.

In the kingdom of Toulouse, the Roman state postal organization was still retained in the seventh century.[7] An Ostrogothic post to Spain is mentioned by Cassiodorus.[8] At the court of the Visigothic king Euric (d. 485), there were large numbers of messengers from the Saxons, Franks, Heruli, Burgundians and Romans, and even Persians[9]; the existence of these affords evidence of vigorous intercourse with other countries. Even in the fifth and sixth centuries the southern French towns, especially Narbonne, Marseilles,[10] and Arles,[11] were important markets for maritime and home trade. Nice also played an important part in trade and commerce at this time; in the sixth century we find there

[1] "Degli ordini sociali e del possesso fondiario appo i Longobardi," *Sitz.-Ber. d. Wiener Akad.* xxxv, 413 (1860).

[2] *MG. DD.*, i, 141, No. 23.

[3] Cf. Mühlbacher's remarks in *MG. DD.*, Car. 6.

[4] xi, 3, *MG. LL.*, sect. i, 1, 400 ff.

[5] "Über Handel u. Handelsrecht bei den Westgoten," in *Bausteine*, ii, 301 ff. (1880).

[6] Apollinaris Sidonius, *Epp.*, vi, 8, vii, 7, *MG. AA.*, viii, 99, 110.

[7] Lex Visigot., v, 4, 19. *MG. LL.*, sect. i, t. 1, 224; and Hudemann, *Das Postwesen d. röm. Kaiserzeit* (1866), 14 f., and Dahn, *Könige*, vi[2], 225.

[8] *Var.*, v, 39 (523–6), op. cit., 166.

[9] Apollinaris Sidonius, viii, 9. *MG. AA.*, viii, 136 f.

[10] Cf. Gregory of Tours, *Hist. Franc.*, iv, 43; vi, 24 (connections with Constantinople); vii, 36; ix, 22 (ships from Spain).

[11] Cf. v. Wietersheim-Dahn, *Gesch. d. Völkerwanderung*, ii, 180.

travellers from the Frankish kingdom (Angers), who were going by ship to Rome, and also Egyptian merchants bringing wares.[1] The trade of southern France to Burgundy must also have been very important at that time, for in 587 King Guntchram formally laid an embargo on all trade in the towns of Septimania, in consequence of political upheavals.[2]

The Visigothic laws include various decrees concerning the police service for strangers.[3] They were clearly drawn up in the interest and for the protection of foreign merchants travelling about in the country; and were intended to provide freedom of movement, security against robbery in case of shipwreck, abolition of limitations of trade, and other conditions for undisturbed commerce. The Jews in particular appear to have taken part in commerce and to have possessed great wealth gained thereby.[4] It is indeed well known that Jewish persecutions began under King Sisibut (612) and led later on to the decree at the sixteenth Council of Toledo (693) forbidding their trade with Christians and access to the harbours (*cataplum*).[5]

The age-old maritime trade in the Mediterranean was of very great economic significance for Gaul also. Greeks, Syrians, and Jews, overseas merchants from the East, not only had permanent establishments in the ports of southern France (Marseilles, Arles, Narbonne, and Bordeaux), but at an early date had spread into the interior. We find them in Poitiers, Orleans, and Paris, as also in Mainz and Worms. They brought wares from the East, silk and spices, paper and rare wines to the western lands.[6] The Jews played an important part here, too, especially in the extensive slave trade.[7]

It is, however, quite wrong to suppose, as in view of these facts some scholars still do, that trade in this early period was carried on exclusively or even mainly by foreigners, and was limited to luxuries and other rare articles which were not produced at home.[8] Two particularly notable examples from the sixth century will demonstrate the artificiality of this theory and its inconsistency with documentary evidence. Gregory of Tours tells how Bishop Desideratus (535–554), out of sympathy for the poverty of his citizens, appealed to King Theudebert (534–548), who was well known for his benevolence, to advance money for the promotion of trade, such as was being carried on by other cities. The king lent the bishop 7,000 gold pieces and the latter divided them among the citizens, who by their trading activities acquired the great wealth for which they became so famous in Gregory's time.[9] Gregory of Tours also tells us that during the great famine of 585, merchants and traders bought up corn and wine, and sold it again at enormous prices to the population, thereby causing much economic distress.[10]

These examples make it clear that in general trade by no means consisted

[1] Gregory of Tours, *Hist. Franc.*, vi, 6.
[2] Ibid., ix, 1.
[3] Lex Visigot., vi, 4, 4; vii, 2, 18; viii, 4, 23, 27; ix, 1, 6, 8, 21; xii, 3, 20.
[4] Dahn, *Könige*, vi, 410 ff.
[5] Ibid., 419.
[6] For detailed description see Scheffer-Boichorst, "Zur Gesch. der Syrer im Abendlande," *Mittail. d. Institt.*, vi, 521 ff.
[7] Cf. Br. Hahn, *Die wirtschaftl. Tätigkeit der Juden i. frankisch. u. Deutschen Reich*, 1911, 18 ff., especially 23.
[8] See Germ. edit., ii², 447.
[9] *Hist. Franc.*, iii, 34; op. cit., 137.
[10] Ibid., vii, 45; op. cit., 1, 322.

solely of luxury or overseas wares, or of rare commodities; and this conclusion is borne out by the fact, mentioned above, that the monasteries supplied their own needs, among other things, in clothes, by purchase at the markets.[1] Also it becomes evident that it was not only foreign merchants who were carrying on trade; a large proportion of the native population must have done so as well. Trade was quite openly the source of wealth of this class of professional merchants. Descriptions in Gregory of Tours afford numerous examples in which merchants and traders appear as rich and esteemed citizens.[2] Moreover, contemporary documents yield further instances. Thus Clothar II (*c.* 627) confirms various gifts of his own property bequeathed by the deceased merchant, Johannes, to St. Denis and other churches in Paris.[3] The clergy of that period also often traded for the purpose of making profit, which proves that trade was both extensive and lucrative. As early as 538 the bishops at the Council of Orleans objected to this, and forbade all the higher clergy from the deacons upwards to lend money at high rates of interest or to carry on professionally any form of trade with the people.[4] On this occasion we also learn that the clergy had been carrying on forbidden trading operations under assumed names. Especially significant here is the antithesis with professional traders, who are said to carry on their trade publicly for the purpose of supplying the needs of the people, for which service the people paid them. There was at that time no direct supply of goods[5] from producer to consumer. On the contrary, there existed already an imposing class of merchants and traders acting as middlemen between the two parties, who were not merely making their living thereby but were acquiring great wealth in the process. A particular case mentioned by Gregory of Tours makes this quite clear. A merchant of Tours, Cristoforus, went to Orleans, having heard that a quantity of wine had been brought there, bought it at a high price, and carried it away in boats, with the help of two Saxon servants.[6] Also the account, mentioned above, of profiteering in corn and wine by traders in the famine of 585, shows that there was no direct production for consumers in Bücher's sense, but that there was already an intermediary class of merchants.

What, however, were the conditions in Inner Germany? Up to the present day it has been assumed that they were quite different. Just as the South and the West, the old Roman areas, are thought to show still some survival of trade and industry, so Germany in general estimation is an undeveloped country, which was little touched by large-scale trade.[7] Busy trade routes, apart from the old Roman roads, were few and far between in Merovingian times, and only to be found in Neustria.[8] Earlier in this book I have had occasion to demonstrate the inaccuracy of these ideas in the light of recent, and especially of geographical, research.[9] Prehistoric finds have proved that commerce developed quite early there. Extensive trading

[1] See above, 329 f.
[2] Cf. *Hist. Franc.*, vii, 46.
[3] *MG. DD.*, i, 13, No. 11 (orig.).
[4] c. 30, *MG.*, Concil., i, 82.
[5] K. Bücher, *Die Entstehung der Volkswirtschaft*, 5th edit., 116 ff. (1906).
[6] *Hist. Franc.*, vii, 46: op. cit., 322.
[7] See R. Kötzschke, op. cit., 77 (1908). In the 2nd edit. (1921), 102, this was limited to the main part of inner Germany.
[8] Inama-Sternegg, *DWG.*, i², 236 (1909).
[9] See above, 30 ff.

activity in all directions was not peculiar to the Middle Rhine district[1]: thus in the early Bronze Age (2000–1500 B.C.) the eastern connections with the Danube valley were of predominating importance, while in the later Bronze Age, i.e. the beginning of the Hallstatt Epoch (*c.* 1000 B.C.), the Southern trade, with Switzerland and Italy, predominated. Thuringia also, where according to recent economic historians the ancient German wilderness of forest and marsh remained intact until the sixth century, appears in the light of the latest prehistoric and geographical information as to settlements[2] to have developed along quite different lines.

Then there is the problem of the Roman period. I consider that it is completely erroneous[3] to assume that during that period only frontier trading along the *limes* took place and that this was mainly a barter trade. Cæsar's accounts deserve more careful consideration. He relates that the Germans allowed Roman merchants to enter their land, in order to sell them the spoils of war rather than to receive foreign goods.[4] This would make it appear that the Germans were actively trading themselves. Tacitus' information about barter[5] must not mislead us. The numerous Roman coins of imperial times, found especially in Silesia, have proved that there cannot have been barter here, but that the Roman merchant paid in cash.[6] Tacitus himself shows how important trade must have been in his time, in a passage in which the inhabitants of Cologne are described as having paid tribute and taxes (*vectigal et onera commerciorum*) from the proceeds of their trade.[7] As in Cologne, so also in Metz and Trier, commerce and trade flourished. In the East, Regensburg was the centre of a profitable and far-reaching trade along the Danube. Inscriptions have been found belonging to the early third century, which mention *negotiatores*, and numerous bronze statuettes of Mercury have been excavated, which were probably dedicated by merchants.[8]

The Romans even traded with Northern Germany, as the important finds at Hemmoor in Hanover prove (nineteen bronze vessels of the end of the second or beginning of the third century).[9] We may also add the three officially stamped silver bars of the fifth century, excavated near Dierstorf in the bed of the Weser.[10] At that time Nimwegen in Holland was the centre for merchants trading with the German north.[11] Moreover, the island of Walcheren was an important centre, being especially suited by its position for maritime trade. On its northern coast, the port of Domburg, and on the south, that of Vlissingen, were used by German seamen for trade with England, a fact proved by the dedicatory inscriptions found there.[12] One has been found in the village of Vechten on

[1] Cf. K. Schumacher, "Kultur- und Handelsbeziehungen des Mittelrheingebietes und insbesondere Hessens während der Bronzezeit," *Westd. Zeitschr.*, xx, 209 (1901) and W. Varges, "Der deutsche Handel von der Urzeit bis zur Entstehung des Frankenreiches," *Progr. d. Realgymn. Ruhrort* (1903).

[2] See above, 120 ff.

[3] See the collected examples in F. Kauffmann, *Deutsche Altertumskunde*, i, 467 ff.

[4] *Bell. Gall.*, iv, 2.

[5] *Germania*, c. 5.

[6] Kopietz, "Handelsbeziehungen der Römer zum östlichen Germanien," *Histor. Jahrb.*, xiii, 425 ff., especially 428 (1892).

[7] *Histor.*, iv, 65.

[8] Cf. *Verhandl. des Histor. Ver. v. Ob.-Pfalz u. Regensburg*, 65, 49 (1915).

[9] H. Willers, *Die römischen Bronzeeimer von Hemmor* (1901).

[10] Ibid., appendix.

[11] Cf. H. Willers, *Neue Untersuchungen über die römische Bronze-industrie von Capua und von Niedergermanien* (1907), 45.

[12] Ibid., 46 f.

the left bank of the curve of the Rhine, somewhat above Utrecht, and relates to a ship's crew from Tongern, trading between this place and North German lands. And the trading centre Dorstat, so often mentioned in Carolingian times, has now been proved to have had an active commerce in the Roman period.[1] From the Lower Rhine the Roman trade, which earlier had been limited to the coast of the North Sea, gradually spread to the Baltic. As early as the time of the Emperor Nero (*c.* 60) a Roman merchant went through Pannonia to the Baltic to inquire about the amber newly discovered there.[2] Trade must have been especially flourishing there in the third century; in the small island of Gothland alone, 4,200 Roman coins have been found. Wisby was then a trading centre of the first rank. The find of Roman *denarii*, excavated in the fields of the estate of Franzburg near Hanover,[3] is so like that in Goldenstedt (in the Oldenburg district of Vechta) that it is a clear proof of the interdependence and the gradual spread of this trade.

This late Roman commerce[4] certainly did not cease completely during the migrations. We are told that in the middle of the fourth century the Emperor Julian had 600 ships on the Rhine, of which he had had 400 built within ten months.[5] From Ammianus we learn that quantities of corn were brought from England as provisions for the camps on the Rhine.[6] Severus, the Emperor Valentinian's general, met in 371 near Wiesbaden a troop of traders and hawkers who were probably Roman subjects.[7] It is significant that Theodoric the Great received amber ornaments as presents from messengers of the Aestui on the Baltic Sea,[8] for this indicates that Italy's intercourse with the mouth of the Vistula was not interrupted by the migrations.

The trade which existed between South-West Germany and Switzerland, and Italy in Roman times has been recently described by Al. Schulte.[9] This intercourse did not cease with the fall of the West Roman Empire. In the fourth century there appears for the first time a series of accounts of journeys which correspond to the Roman itineraries for military purposes (*Itin. Antonini*, *c.* 300, world map of Castorius or the so-called *Tabula Peutingeriana*, *c.* 366, etc.)[10] describing journeys from Gaul and Spain to Italy, or from Italy to the Holy Land, with detailed accounts of the places touched (night quarters and relay stations). To this series belong the *Itinerarium Burdigalense* (after 334)[11] and that of the Gallic matron Sylvia (?) who wrote about 385 for her fellow-nuns[12]; and to this same period or a little later belongs the interesting Spanish itinerary from Cadiz to Constantinople by land over Mt. Genèvre (from Valence to Turin),[13] which shows that the Alpine roads were generally

[1] Cf. E. Norden, *Die german. Urgesch., in Tacitus' Germania* (1920), 494.
[2] Pliny, *Hist. Natur.*, xxxvii, 3, 45. See also Germ. edit., ii², 452, note 279.
[3] Willers, op. cit., 100 ff.
[4] See recently also K. Schumacher, *Siedelungs- u. Kulturgesch. d. Rheinlande*, ii, 280 ff. (1923).
[5] Zosimus, *Histor.*, iii, 5.
[6] *Histor.*, xviii, 2.
[7] Ibid., xxix, 4, 4.
[8] Cf. Cassiodorus, *Var.*, v, 2 (523–6). Also E. Norden, op. cit., 448.
[9] *Gesch. des mittelalterl., Handels. u. Verkehrs zwischen Westdeutschland u. Italien*, i, 39 ff. (1900).
[10] See on these Konr. Miller, *Itineraria Romana*, 1916, Introd., xxxii ff., and the article "Itinerarien" by W. Kubitschek in Pauly-Wissowa's *Realencyklopädie*, ix, 2, 2308 ff. (1916).
[11] Cf. Kubitschek, op. cit., 2354, edited by P. Geyer, *Corpus, SS. eccles. lat.*, 39, 1 ff. (1898).
[12] Geyer, op. cit., 35 ff.
[13] See recently W. Kubitschek, *Itinerar-Studien*, (1919).

accessible and passable. From the beginning of the fifth century there is a Jerusalem itinerary by a certain Virgilius.[1] Besides the works of Theodosius from Northern Africa (*c.* 530),[2] and of Antoninus of Piacenza (*c.* 570),[3] I may also mention the account of the Frankish Bishop Arculf a century later, dictated by him to Abbot Adamnanus at Hy on the Scottish island of Iona, where he had been shipwrecked on his return journey and hospitably received.[4] Finally, there is Bede's work *de locis Sanctis*,[5] which is partly drawn from the last work. This relatively rich travel literature was designed to serve practical needs. Moreover, these accounts make it plain that the introduction and spread of Christianity helped to maintain and develop the old commercial intercourse of the Roman Empire. Numerous pilgrimages were made from Gaul and Inner Germany to the holy places in Rome. Guides, the so-called *periegetes*, showed the pilgrims the public monuments, and formal lists of the latter were drawn up in due form in the seventh century. In about the year 640 a pilgrim visiting the holy places in Rome, described his tour in detail in the work known as the Salzburg *Itinerarium*.[6]

Moreover, the so-called migrations were not only no hindrance to the earlier trade, but indeed made new connections which must have stimulated it. Migrations have, after all, always brought mankind together and have often brought distant civilizations into touch, so that gulfs were bridged and cultures could be transmitted from one to the other. This has recently been demonstrated in the sphere of the history of art, by Josef Strzygowski, from rich finds of treasures in the East—Hungary, Southern Russia, and the Balkans.[7] Here we should also note the early Christian monuments and small finds from Oriental sources discovered in Germany itself. Those preserved in the Strasburg Museum deserve special notice.[8] Contemporary historical accounts complete this picture. We learn that the Gothic King Athanaric, to whom one of these finds of treasures (at Petrossa in Rumania) was at one time ascribed,[9] was forced in 369 to make peace because, among other reasons, his people were suffering owing to interrupted trade.[10] There is a striking coincidence here with the state of affairs described in the *Vita Severini* as existing in Noricum in the second half of the fifth century. The citizens of Passau on the Inn (Boiotrum) begged Athanaric to induce Feba, the King of the Rugii, to revive the trade between the Roman population and his barbarians.[11] On the Roman *limes* on the other side of the Danube there were barbarian markets, where the slave-trade [12] was particularly brisk. There was no slackness in trade among other German tribes in Inner Germany, too; this is especially true of the Alemanni at a very early date. Ammianus Marcellinus noted that between these people and the Burgundians there were quarrels about the important salt-springs on the

[1] Cf. Cardinal J. B. Pitra, *Anal. sacra. et class. Spicil. Solesm. par.*, N.S. (1888), v, 118 ff.
[2] *De situ terrae Sanctae*, Geyer, op. cit., 135 ff.
[3] Geyer, op. cit., 157 ff.
[4] Ibid., 219.
[5] Ibid., 299 ff.
[6] Cf. Zettinger, *D. Ber. liber Rompilger aus d. Frankenreiche bis. z. J.*, 800 (1900), 45 f.
[7] *Altai-Iran und Völkerwanderung* (1917), especially 234 ff.
[8] Joh. Friker, *Denkmäler der elsäss. Altertumssammlung*, p. viii, Table ii.
[9] Cf. L. Lindenschmit, *Handbuch d. deutsch. Altertumskunde*, Tables 36, 37.
[10] Ammianus Marcellinus, xxvii, 7.
[11] c. 22, par. 2, *MG. AA.*, I, 19.
[12] See above, 313.

Kocher.[1] There must also have been a fairly extensive trade in cattle with Italy at the end of the fifth century. Alemannic cattle were finer than those of Noricum and there was therefore a demand for them. King Theodoric the Ostrogoth permitted the provincials in Noricum (*c.* 507) to exchange their cattle with the Alemanni.[2] It has already been pointed out that there was also a flourishing slave-trade among the latter.[3] The favourable geographical situation of the Alemannic settlements, commanding as they did important roads over the Alps into Italy, must early have promoted intercourse and trade. The Alemannic bishops regularly appeared at the Merovingian Councils of the sixth and seventh centuries, which were held in Frankish and Burgundian parts of the kingdom.[4]

The passes over the Alps must still have been quite passable in the sixth century; both the itineraries mentioned above, and Gregory of Tours' account of the march of King Childebert's army (590) via Bellizona and Milan into Italy,[5] make this evident, and it is true not only of the West but of the East. The great alpine roads were not destroyed in the migrations and were frequently used by peaceful travellers.[6] It was along the Pontebba road that the Roman population of Noricum was led into Italy in 488, when attacked by the Germans. And in that stormy age Venantius Fortunatus journeyed from Ravenna and back over the Plöckenpass through the land of the Baiuvari and Alemanni to Tours. He gave a vivid description of his journey in verse,[7] and therein we learn that the Brenner road, which he also used, was quite passable.[8] Trade was carried on along the latter, even during the great insurrections of the sixth century, as we know from an order of Theodoric the Ostrogoth, who took the part of a merchant robbed there by the Breoni.[9] Wherever detailed research has recently been made into the Roman roads, we have the same positive result: they were not only maintained, but continued to give good service, especially to trade and commerce.[10] Above all they served as channels for the spread of Christianity. Many times already the importance of the Roman roads in this connection has been strongly emphasized. It becomes particularly clear in Bavaria, where early German long barrows (*Reihengräber*) have actually been found along these roads.[11]

Thus so far as technical conditions were concerned, a development of trade in the early medieval period could have taken place, and contemporary sources in fact give important details concerning it. In the *Lex Salica* it is forbidden to trade with another man's slaves without the owner's knowledge.[12] Evidently such trade was allowed with freemen, and was not exceptional. Too little consideration has been given to the interesting fact reported by the East Roman

[1] *Histor.*, xxviii, 5.
[2] Cassiodorus, *Var.*, iii, 50; *MG. AA.*, xii, 104.
[3] See above, 232 f.
[4] Cf. the signatures of the acts of Councils in *MG.*, Concil., i.
[5] *Hist. Franc.*, x, 3, op. cit., 410 f. Also *MG. Epp.*, iii, 623.
[6] Wanka v. Rodlow, *Der Verkehr üb. d. Pass von Pontabba-Pontafel u. den Predil im Altertume u. M.A.* in *Prager Studien a.d. Gebiet d. Geech.-Wiss.*, iii, 20 (1898).
[7] *MG. AA.*, iv, 368, v. 641-656.
[8] Wanka v. Rodlow, *Die Brennerstrasse im Altertum u. MA.* in *Prager Studien*, vii, 63 f. (1900).
[9] Cassiodorus, *Var.*, i, 11; *MG. AA.*, xii, 20.
[10] See Germ. edit., ii[2], 458, note 314.
[11] Cf. F. Weber, "Beitr. z. Vorgesch. von Ob.-Bayern.," *Beitr. z. Anthropologie u. Urgesch. Bayerns*, xiv, xv (1902-4).
[12] xxvii, 26.

Agathias (sixth century) that the Franks took over trading rights from the Romans.[1] Moreover, Jordanes (sixth century) gives further evidence that the North German peoples of Sweden conducted a vigorous fur-trade with the Romans, in which the tribes of Inner Germany acted as intermediaries.[2] At that time there was active intercourse between the Byzantine Empire and the Scandinavian north; parts of the Gothic tribe of the Heruli were settled in Illyricum as well as in Southern Sweden, and kept up a connection with one another.[3]

Fredegarius' account of the Frankish trade with the Slavs gives a concrete proof of the extent of trade eastwards [4] at the beginning of the seventh century. Moreover, there was also an active slave trade in the Frankish kingdom at that time; the Council of Châlons (639–654) was obliged to forbid the sale of slaves outside the kingdom of King Clovis II (638–656) [5] and it is also apparent that the Jews were especially interested in this trade. In the time of King Dagobert I (628–638) the fair of St. Denis near Paris was a famous market, to which merchants flocked from North and South from great distances. The king encouraged this form of commercial intercourse by remitting customs duties for the merchants at fair-time.[6] With the spread of Frankish political power, trade was bound to extend. The great conquests of King Theudebert (534–548), who extended his rule to Pannonia and Jutland, deserve special attention. At the beginning of the seventh century as a result of these conquests, Frankish missionaries, such as the Abbot Eustasius of Luxeuil (d. 629), appear even in Bavaria. It is therefore no accident that the Frank Samo was already trading with the Slav Wends, who had now become the neighbours of the Franks in the East.

At the end of the sixth century the Frankish bishops took possession of the ecclesiastical province of Noricum and drove Aquileia out.[7] This, too, was a result of King Theudebert's subjection of Bavaria to Frankish rule; and it was certain to have a considerable effect on trade. For the Bauivari had extended their territory over the Brenner to Bauzanum (Bozen), and were in close contact with the Lombards, who had conquered Italy. In the second half of the sixth century the ruling families had already strengthened this contact by intermarriages. Then with Aripert a Bavarian dynasty came (652) to the Lombard throne. The religious consequences of these connections are well known. Not only did Catholicism cross the Alps with the Bavarian princesses, but trade and commerce were thereby stimulated.

The Bavarian folk-law may be regarded as an expression of this development, although its present form is not earlier than the eighth century. A number of its decrees are worth consideration in this connection. First, that concerning the security of strangers in the land. They are significantly divided into two classes: those who are travelling for pious purposes (*propter Deum*) and those

[1] *Histor.*, i, 2.

[2] *Getica*, iii, 21. *MG. AA.*, v, 59.

[3] Cf. Procopius, *Bell. Got.*, vi, 15. Also C. F. Wibarg, *D. Einfluss d. klass. Völker auf d. Norden durch d. Handelsverkehr.* Trans. from the Swedish by J. Mestorf, 1867, and O. Montelius, *Kulturgesch. Schwedens* (1906).

[4] *MG. SS. rer. Merov.*, ii, 144.

[5] *MG.*, Concil., i, 210, c. 9: Clovis II ruled Neustria and Burgundy, but finally obtained in addition lordship over Austrasia.

[6] Cf. the confirmation of the lost genuine document of King Dagobert in 753. *MG. DD.*, Car., 6, and above, 343.

[7] Cf. J. Friedrich, "Die ecclesia Augustana i. d. Schreiben d. istrischen Bischöfe an Kaiser Mauritius v. J. 591," *Sitz.-Ber. d. bayer. Akad.* (1906), 327 ff.

who are obliged to do so on business (*propter necessitatem*)[1]; i.e. pilgrims[2] and business men, by which term traders are certainly implied. Any injustice to them must be atoned for, as if to natives of the country. Secondly, it is forbidden to obstruct public roads of communication in any way, a prohibition which apparently also extends to by-roads and paths (probably in the mountains).[3] Then there are the detailed decrees concerning trade in stolen goods,[4] or the receiving of the same[5]; concerning the giving of pledges,[6] safe deposit and loans (*commodata*) for payment (*merces*).[7] Under this title mention is made not only of animals but also of gold, silver, ornaments and other wares, entrusted to others to store or to sell, and there are also regulations about the responsibility of the person in charge if these things are lost,[8] and the compensation paid by him.[9] Finally, it is forbidden to give away or to sell anything of doubtful ownership.[10] Very detailed rules are made concerning the sale of *mobilia* (unfree men) and *immobilia*[11]; it is again forbidden to do business with unfree men without the knowledge of their owners.[12] Further, this law deals with the safeguarding of sales against impeachment in consequence of quarrels over prices[13]; responsibility for hidden flaws; the fulfilment of the agreements confirmed by *arrha*,[14] and finally the safeguarding of agreements entered into before witnesses in writing.[15]

A survey of all these detailed decrees forces us to admit that the legal conditions of commerce presupposed by these laws, in parts so highly developed, must have been quite different from those previously thought to exist in Bavaria. Here provision is made for economic needs which are inconsistent with the theory of purely natural and self-sufficient economic units. Positive proof is afforded of the existence of articles of trade and the means of exchanging them. Not only *mobilia* (unfree men and cattle) but *immobilia* were regularly the object of such legal business, and were paid for in cash. This is confirmed by the fact that these laws correspond in many points with the Visigothic law, which, as we have already seen, shows that commercial life was relatively highly developed.[16]

I believe that the orientation of economic history in general has been wrong. There has been too much emphasis on the Western (Neustrian) origin of developments and influences and no consideration of the fact that East Germany also experienced direct influences from East and South. The usual view has been that in this early period the only appreciable volume of trade and commerce was taking place in the north, among the Frisians and Saxons. Hence they were regarded as *the* real traders of the time. Frisians and Saxons were regular visitors at the oft quoted fair of St. Denis, even in King Dagobert I's time (628–638). It is probable that they traded not only in the products of their native industries (cloth and textiles) but also as middle men in foreign wares.[17] I have already mentioned the slave trade in the Frisian Law.[18] The *Lex Saxonum* (*c.* 802), which

[1] iv, 30; *MG. LL.*, iii, 294.
[2] Cf. the Capitularies of King Pippin, 754–5, c. 4 (*MG.*, Capit. i, 32), and 755, c. 22 (ibid., 37).
[3] x, 19–21.
[4] ix, 7, 13.
[5] ix, 15.
[6] xiii, 1, 3.
[7] xv, 1, 2.
[8] xv, 2, 4.
[9] xv, 5.
[10] xv, 6.
[11] xvi.
[12] xvi, 3.
[13] xvi, 9.
[14] xvi, 10.
[15] xvi, 15, 16.
[16] Dahn, *Bausteine*, ii, 320 f.
[17] See Germ. edit., ii², 463, note 341.
[18] See above, 232.

certainly is later, depicts similar conditions. Here we see the provision for the security of public trade,[1] the observance of commercial agreements,[2] and evidence of a vigorous maritime trade.[3]

An early development of trade among the Thuringians may also be assumed. The connection between the *Lex Angliorum et Werinorum* (*c.* 802–3) and the *Lex Saxonum* [4] points to this, as I have previously argued. In the Thuringian folk-law, also, it is forbidden to sell freemen *extra solum* (c. 40).[5] The trade route from Thuringia through Hessen to the Middle Rhine and Mainz, and to the South (Augsburg) was a very ancient one.[6] Even the Hermunduri came to the Augsburg markets, according to Tacitus.[7] We should also remember in this connection the strife between them and the Chatti about the salt springs of Salzungen, mentioned by the same author in the year A.D. 58.[8]

As in the case of the Frisians and the Continental Saxons, the geographical position of the Anglo-Saxons likewise helped to develop trade there in the earliest times. The trade between Belgium and Britain was described by Cæsar as being very active.[9] In the time of the Roman Empire it developed further.[10] Ammianus Marcellinus relates that great quantities of corn were brought from Britain to the Roman station on the Rhine.[11] In the seventh century there was a lively traffic between England and the opposite coast of Brittany, as we learn from numerous coins found here [12]; Merovingian *denarii* are found in England,[13] and Anglo-Saxon *sceattas* in Brittany.[13] Moreover the lives of the Saints (*Vita s. Filiberti*, and that of Columba), tell us that before the Carolingian period various goods, especially clothing (shoes and garments), were brought from Ireland to Brittany.[14]

In Edwin's time (628) the King's provision for the security of trade and of travellers in Britain is emphasized.[15] Among the trading towns London (which already had an active trade in the time of Tacitus)[16] and York are especially prominent, then Bristol and Chester. In 685 London was already the cattle market for Kent. As a port for crossing to England, Quentowic (near Etaples) was very important in the seventh century, when the number of pilgrims journeying to Rome had greatly increased,[17] and it is probable that a not unimportant trade between the British Isles and Gothland had already developed in that era.[18] Trade and commerce play a correspondingly important part in the laws of the

[1] c. 37, *MG.*, iii, 68.
[2] Ibid., c. 61, op. cit., 78.
[3] Ibid., c. 9, op. cit., 50.
[4] Cf. Brunner, *DRG.*, i, 472.
[5] *MG. LL.*, v, 132.
[6] Cf. also K. Schumacher, *Siedelungs- u. Kulturgesch. d. Rheinl.*, ii, 241 f. (1923).
[7] *Germania*, c. 41.
[8] *Annal.*, 13, 57.
[9] *Bell. Gall.*, v, 12; cf. Germ. edit. i², 314.
[10] Cf. Harster, *Mitteil. d. Hist. Ver. d. Pfalz*, xx, 62 ff. (1896), on the trade from Rheinzabern to England.
[11] *Histor.*, xviii, 2.
[12] Cf. E. Cartier, *Revue Numismatique*, 1847, 17.
[13] Cf. especially M. Prou and Bougenot, on the silver finds of Bais (*Ille-et-Vilaine*), ibid., iv, ser. 11, 184 ff., especially 195 (1907).
[14] *MG. SS. rer. Merov.*, v, 603, c. 42.
[15] Bede, *Hist. Eccl.*, ii, 16.
[16] *Anal.*, xiv, 33.
[17] Ibid., iv, 1, 253, and Fengler, *Quentowich. Hansisch. Gesch. Bll.*, xiii, 91 ff. (1907), especially 99 ff.
[18] Cf. A. Bugge, "Die nordeuropäischen Verkehrswege im frühen, MA.," *Vierteljahrschr. f. Soz. u. WG.*, iv, 266 f.

Anglo-Saxon kings. In 685 in the London market, stolen goods could be demanded by the original owner from the purchaser, who had bought them in good faith, only if he refunded the purchase price.[1] According to the laws of Ine, a merchant caught stealing does not pay as high a fine as others do, and none is required if he has acquired the goods in good faith.[2] Clearly trade is to be favoured and encouraged. Moreover, a purchaser may return goods within thirty days if he finds them unsatisfactory.[3] In England, too, the sale of natives (both free and unfree) overseas is forbidden.[4]

These detailed proofs of conditions in the pre-Carolingian period enable us to depict the general character of trade more accurately than has hitherto been done. Above all it has become clear that the great estates do not play the important and leading part formerly ascribed to them. I believe that in this matter the peculiar nature of the documentary evidence has been misleading. Because we possess royal grants allowing ecclesiastical estate owners to consign their wares duty free, and to sell them in the markets, it was imagined that they were the chief traders, so far as it was possible for any trade to take place within the framework of the supposedly self-sufficient economic unit of the time. But the fact that these remissions of duty were intended only to apply to things actually consumed by the religious institution in question has been completely overlooked. Anything over and above these domestic goods had to pay duty. The holders of such *privilegia* could not trade freely without paying duty, and this is expressly emphasized in the wording itself.[5] Here we must also add the canonical prohibition by which clergy were forbidden to trade for gain, i.e. for commercial profit.[6]

This also explains the phenomenon that similar remissions of duty were granted only to a specific number of ships. The small number of these ships (two to five) led Sombart to conclude that the trade of the time was unimportant and even "diminutive".[7] The conclusion is inadmissible, because this restriction of exemption from customs to the personal needs of the recipient[8] prevents us from establishing any connection between it and the general scope of trade. They are two quite different things. A glance at the similar remission of duty for pilgrims shows that no general remission was effected by these *privilegia*. Charles the Great in 796 expressly forbade the pilgrims to trade beyond the measure of their personal needs; if they went beyond this, they were to pay duty.[9]

The theory of the self-sufficient independent economy of the great estates cannot be saved by the assumption that an intentional surplus production served only to supply the personal need for such articles of consumption as could not be produced within the domestic economy.[10] Lay and ecclesiastical lords in that period used the amount realized from their surplus production not only to complement their own products but to purchase luxuries, such as ornaments

[1] Hlothaere, 16, 2; F. Liebermann, *Gesetze d. Angelsachsen*, I, 11. Also his article "Handel," ibid., II, 2, 491.
[2] *Ine*, 25; Liebermann, op. cit., I, 101.
[3] *Ine*, 56.
[4] *Ine*, 11.
[5] See the quotations referred to in Germ. edit. II[2], 410, note 41.
[6] See the decrees of the Council of Orleans (538) referred to above, 345, note 4.
[7] *Der moderne Kapitalismus*, I, 120.
[8] See also King Pippin's Capitulare of 754–5, c. 4, *MG.*, Capit. I, 32.
[9] Cf. *MG. Epp.*, IV, 145; and my *Wirtschaftsentwicklung d. Karol.-Zeit*, II, 194, note 3.
[10] Sombart, op. cit., I, 63, 105; cf. also 94 f.

and splendid clothes,[1] and also to extend their land. Thus Gregory of Tours tells how a noble Goth wanted to purchase with gold the watermill on an ecclesiastical estate[2]; and he repeatedly speaks of bishops who bought various properties (*villae*) to add to their episcopal lands.[3] This is most clearly seen in the story of the treasure of King Chilperic's wife (d. 584), who was obliged to excuse its magnitude by explaining that much of it had been bought with the revenue from the homesteads given to her.[4] Here we have one of the earliest examples of the accumulation of capital from ground rent.

What is the position with regard to the further assertion that trade in that period was small in volume? According to this theory, trade was not only "diminutive", but brought the merchants very little gain, so that they only just made their living. There were no wholesale traders, but only "beggarly hawkers", people who haunt markets, like those to be seen to-day in the fairs of small towns. They were "pedlars and hawkers, who with their crutch, their pack-animal, or their cart went from village to village, from one lord's residence to another, as they do to-day in remote mountain districts; small watermen, such as have disappeared long ago from our rivers, and compared with whom the boatman Wulkow is a great shipowner".[5] But the picture afforded by the documents is quite different. We have already heard of a rich trader of Tours who in the sixth century bought a quantity of wine at a high price in Orleans, and carried it away in boats.[6] The citizens of Verdun undertook business transactions with a capital of 7,000 gold pieces lent to them by King Theudebert (534–548), and so rose from their original poverty to the wealth for which they were widely renowned.[7] A Syrian merchant became a bishop in Paris, because he used large sums of money for bribery.[8] Another merchant is said to have owned a house which he turned into a church[9]; he must therefore have had other great possessions. Moreover, the merchant in Marseilles from whom seventy vessels of oil and fat were stolen at once, for which an archdeacon accused of the theft had to pay a fine of 4,000 gold pieces,[10] cannot have been a "beggarly hawker". In Italy as early as the middle of the eighth century there were so many and such rich merchants that for the purposes of the military levy not only were they divided into different classes, but the richer ones were authorized to take the field on horseback and in heavy armour.[11] Even small retail dealers made extraordinarily large profits from their trade. Gregory of Tours' story about the avaricious merchant in Lyons, who began his wine trade with the third of a solidus and, by diluting his wine with water, retailed his wares at such profit that in a short time he made 100 solidi, i.e. 300 times his original capital, affords striking evidence of this.[12] Here, too, we may recall the case quoted above of the lector in Clermont-Ferrand, whose rich profit as middleman is related by Apollinaris Sidonius.[13] All these examples show that at that time

[1] See above 332 and 333.
[2] See above, 333.
[3] See, for example, *Hist. Franc.*, v, 5, the remark at the end about Lampadius.
[4] Gregory of Tours, *Hist. Franc.*, vii, 45.
[5] Sombart, *op. cit.*, i, 119.
[6] See above, 345.
[7] See above, 344.
[8] Gregory of Tours, *Hist. Franc.*, x, 26.
[9] Ibid., vii, 31.
[10] Ibid., iv, 43.
[11] See the law of Aistulf, of 750, i, 3; *MG. LL.*, iv, 196, and above, 342.
[12] *Lib. in gloria confessor.* c. 110; *MG. SS. rer. Merov.*, i, 819.
[13] See above, 343 f.

the profits from the exchange of goods corresponded with the velocity of their circulation.

A fundamental error of previous research has also been the view that in that period all conditions necessary for the free fixing of prices were lacking, and that the market as a regular meeting-place of buyers and sellers, and the knowledge of prime costs elsewhere, did not exist. Moreover, costs of production could not be taken into consideration. The simplicity, regularity, and uniformity of economic life in general fixed the same value for all objects of general usefulness, and maintained that value in different districts and over long periods.[1] In actual fact, however, there was no such constancy in value. Above all, as the documentary evidence given above shows, the widespread isolation of single economic units, which is the necessary condition of such a constant value, never existed. If, however, trade and commerce were actually much more developed than this theory allows, then entirely different conditions prevailed for the fixing of prices. In particular, the collapse of Roman rule, bringing in its train freedom from the oppression of official caprice, must have caused a fall in prices, hitherto artificially kept up. This has already been noticed in Italy, where prices fell considerably in the time of Ostrogothic rule, especially for articles of general use, like corn and wine.[2] We have already learnt that an important feature in Theodoric's laws was the introduction of "fair" prices.[3] He insisted that they should not be fixed by official caprice.[4] Athalaric (527)[5] and Theodahad[6] (535–6) took similar measures, with special reference to the economic position at the time of the failure of the harvest.[7] Thus the actual conditions of production, the necessitous condition of the population, and, above all, the economic productivity of the taxpayers were at times to be taken into consideration in fixing prices. The Emperor Justinian adopted a similar position in the Pragmatic Sanction of 554: prices were to be fixed according to the market.[8] The advantages of free prices would thereby be secured through the freeing of market transactions from all interference.[9] As a matter of fact higher prices were already being paid in town markets than in the country for identical products.[10]

This was not only so in Italy. In the Frankish Kingdom the bishops as early as the Council of Orleans (538) were vigorously upholding fair prices.[11] This doctrine of *iustum pretium* did not appear for the first time in the Carolingian period. If we examine more closely the folk-laws, on which the old theories of legal values and constant price were mainly based, we are led to a similar conclusion. A constant price was actually non-existent. The Visigothic Law recognizes a fair price (*iustum pretium*) in sales both of mobilia (*mancipia*, cattle) and immobilia (*terrae*), and distinguishes a lesser price (*vile pretium*) and a too high price[12] in comparison. Obviously it often happened that sales were afterwards disputed with the excuse that the price paid was too low. This was

[1] v. Inama-Sternegg, *Deutsche Wirtschaftsgeschichte*, i, 266.
[2] See above, 341.
[3] See above, 340.
[4] Cassiodorus, *Var.*, ii, 26 (507–511); *MG. AA.*, xii, 61; cf. also ii, 38, ibid., 67.
[5] Ibid., ix, 5, op. cit., 271.
[6] Ibid., x, 28, op. cit., 315.
[7] Ibid., x, 28, op. cit., 315.
[8] c. 18, *MG. LL.*, 5, 173.
[9] Ibid.
[10] See the letter of Pope Gregory the Great, vii, 23; *MG. Epp.*, i, 468 (597).
[11] *MG.*, Concil., 1, 82, c. 30.
[12] v, 4, 6, 7; *MG. LL.*, sec. i, 1, 219.

now definitely prohibited by law.[1] According to Visigothic law the buyer of gold, silver, ornaments, and costly clothes, sold by overseas traders to natives, if these proved to be stolen goods, is protected against any impeachment if he has paid a *pretium competens*,[2] i.e. if in good faith he has paid a price corresponding to the value of the goods. The quality of the wares was therefore taken into consideration *in concreto* in fixing the price. It must be assumed that here valuation depended on the subjective practical value of the goods to the injured parties in case of damage, theft, or destruction.[3] In the Alemannic Law there are no rigid legal values laid down for cattle; the Tit. lxxx makes this evident: *Summus boves* 5 *tremisses valet. Minor quod adpreciatus fuerit.*[4] And in the *Lex Baiuvar.* *aestimatores* are called in to decide the cost of damages to goods. Here clearly the actual circumstances of the individual case are taken into account.[5] In the Ripuarian Law also, in the *Intertiatio* (*anefang*), if an animal is injured, it is to be valued at its worth when restored. The whole price is to be returned only if it is not uninjured,[6] while in the former case the owner of the stolen goods receives less compensation according to the new valuation. The Salic Law expressly recognizes the conception of a *iustum pretium.* The Rachimburgi, in a case of *fides facta*, i.e. an obligation in legal form, are to value the amount of the debt and the debtor is to pay the fair price.[7]

Moreover, the evidence of the early Frankish formularies should be considered here,[8] and I would point to a number of formulae, from which I think it may be concluded that there was a subjective valuation; for instance, the formula of Tours about foundlings. If these were taken back by the real father or lord (in the case of serfs), the foster-father was to receive either another slave of the same value or the price which the child was worth.[9] A further example is a formula from Sens, which in the text gives the usual form of records of sale and concludes by a sanctions clause laying down the penalty for non-fulfilment of contract of either double the purchase price or the increased value of the article.[10] Here it is made quite clear that the free fixing of prices was not unknown at that time. This is also confirmed by the famine prices to be found as early as the sixth century. We have already heard that the great famine in Gaul (585) was exploited by merchants and traders to raise important provisions (corn and wine).[11] Finally, fancy prices can be found in that period. Gregory of Tours relates that the Bishop Cautinus of Clermont (d. 572) helped the Jews very much by purchasing rare goods which they were able to procure for him. They profited cleverly by flattering his vanity, and obtained from him higher prices than the goods were worth.[12]

Taken as a whole, trade in this early period was much more important and extensive than has been hitherto thought, more especially in view of the fact that in this matter also the extant sources cannot give even an approximate idea of the true state of affairs. I have already pointed out the fundamental importance of this great lacuna in dealing with the Carolingian period.[13] The *testimonium ex silentio* was never of less account than in this matter, because on the one hand

[1] Ibid., v, 4, 7.
[2] Ibid., xi, 3, 1.
[3] See Germ. edit., II[2], 472.
[4] *MG. LL.*, iii, 73.
[5] xiv, 17; ibid., 318.
[6] Tit. lxxii, 7, *MG.*, v, 261.
[7] Tit. l.
[8] See Germ. edit., II[2], 473.
[9] Turon. 11; *MG. FF.*, 141 (taken word for word from Theodosianus).
[10] Senon., No. 2, ibid., 186.
[11] See above, 344 f.
[12] *Hist. Franc.*, iv, 12.
[13] *Wirtschaftsentwicklung der Karolingerzeit*, ii, 255 ff.

the great ecclesiastical estates from which most of the documents emanate had little or no reason to carry on trade, and on the other we have no documents directly handed down to us from the merchants and traders and from those circles of the population among whom such business was presumably carried on. And the ephemeral character of such documents is in the nature of things, as H. Brunner first remarked with special reference to the *cautio*[1]: "it was legally intended to be destroyed."

For this pre-Carolingian age we can put the matter to the test. The preservation of Gregory of Tours' works, affording, as they do, a vivid picture of conditions in Gaul, has added greatly to our knowledge of that country at this period. Similarly, Cassiodorus' *Varia*, and the works of Procopius in the sixth century yield much rich material respecting Italy. The distorted picture given by many economic historians even in recent times is partly due to the fact that they did not take the trouble to examine these comprehensive works.

[1] "Zur Geschichte u. Dogmatik der Wertpapiere," *Zeitschr. f. d. ges. Handelsrecht*, xxii, 69.

Chapter XII

CURRENCY AND MONEY ECONOMY

(1) Currency

THE widely-held theory of the primitive state of German culture in pre-Carolingian times has found considerable support in the general conceptions which have prevailed concerning the currency of that period. Misled by Tacitus' well-known remark about the lack of silver and gold,[1] scholars have even gone so far as to hold that the Germans, both before and after the migrations, possessed neither a coinage of their own nor indeed any form of metal reckoning.[2] The facts that in the folk-laws values are computed in terms of cattle, and that in Ulfilas' well-known Gothic translation of the Bible *pecunia* is translated *faihu* seemed to confirm this view. It was thought that the Roman coins in use among the Germans were accumulated as treasure and were not used for making payments. After the migrations and the fall of the West Roman Empire, the economically isolated German tribes were thought to have received no further appreciable external supplies of currency from which they might have been able to develop some system of currency of their own. Thus it appeared probable that the Inner German peoples, long after the foundation of their settlements, developed no system of money-valuation of the goods in which they traded and which they used.[3]

To-day the advance of archæological excavation has thrown an entirely new light on the subject. Above all, the frequently quoted accounts given of the matter by Tacitus must not be taken too literally. He says himself that the Germans nearest to the Romans had a high regard for money owing to their commercial connections.[4] Thus they were already using gold and silver coins at that time in trade, and not merely treasuring them for their own sake. Moreover, Tacitus declares that they preferred silver to gold coins, because the former were more suitable and convenient to handle in small trade in the cheaper commodities. Trade was, however, also carried on in more costly products. Moreover, we find in the *Germania* itself two passages which prove that the Germans of that time were already receiving large quantities of money from the Romans. Speaking of their peaceful occupations, Tacitus expressly says that the rulers received from the neighbouring tribes not only presents of weapons and horses, but also money,[5] and in his description of the Marcomanni and Quadi, he observes that the power of their kings depended on the support given them by Rome, and specifies money as the most effective support from this source.[6] We may add the numerous accounts given by Roman authors of payments of money to German chiefs and rulers, in particular the passage in *Herodianus* which describes Alexander Severus's march to the Rhine in 234-5, which says that

[1] *Germania*, c. 5.
[2] See v. Inama-Sternegg, in the 2nd edit. of his *WG.*, 1, 238 (1909).
[3] Ibid., 243 f.
[4] c. 5.
[5] c. 15.
[6] c. 42.

the Germans had themselves always been willing to sell peace for cash to the Romans, as they were "money-grubbers".[1] v. Luschin, referring to the finds of coins, rightly pointed out that undoubtedly "in the third and fourth centuries considerable sums of money were sent from the Roman Empire to Germany".[2] He emphasized the extremely important decrees of the Roman Emperors Gratian, Valentinian II, and Theodosius in the years 379–383, which forbade money-payments in trade with the barbarians on pain of death. The Codex of the Emperor Justinian (iv, 63, 2) incorporates these decrees, showing that they were also applicable at a later date.

The numerous finds of coins in Germany in the last decades make it evident that the Germans did not merely hoard these Roman silver coins as treasure. The fact that great hoards of treasure have been found here and there has exerted too great an influence on this view, for in addition to these many smaller quantities of coins have been excavated, not only along the *limes* and in the old Roman provinces, but in a great many parts of Germany, and these cannot have been merely hoards. They were clearly used in trade, as in the time of Tacitus. G. Wolff has suggested that these small coins were left by the Gallo-Roman population, which remained in the boundary lands conquered by the Germans, and that, after the German invasion of the *limes* had died down, and peaceful trade had again sprung up along the *castella*, the coins came into use again. This suggestion has been confirmed by several other archæologists,[3] and may be supplemented by a further observation. Among the finds in the region of Germania, which date from the third and fourth centuries, are *denarii* of the Republican period, to which too much importance has been attached owing to Tacitus' famous story[4]; but the great mass of the coins excavated are *denarii* of the same period as the finds. Trade among the Germans in the fourth century included many more silver pieces of the time of Diocletian and Constantine than of the Republic or the early Empire.[5] This situation developed in the fifth and sixth centuries, in proportion as the commercial intercourse between the barbarians and Romans increased. In Frankish graves of the time silver coins have been found, especially *siliquae* and half-*siliquae* of the Constantinian and Byzantine periods.[6]

Thus we may take it as certain, first, that for centuries the Germans were familiar with Roman coinage and received Roman coins in trade, and, secondly, that they themselves were anxious to receive Roman money, and by no means only silver, in return for their products. Cæsar tells us that the German territory was open to traders, but that its inhabitants wished rather to sell than to buy. They objected to the importation of wine, on the ground that it would soften the people.[7] In this connection we may perhaps refer to the account of Caracalla's march against the Alemanni and Chatti on the Main in 213; at that time there were with the Emperor in Germania messengers from many German peoples, even those on the North Sea and at the mouth of the Elbe, who offered friendship

[1] vi, 7; see also i, 6.

[2] "Der Denar der Lex Salica," *Sitz.-Ber. d. Wiener Akad.*, 163, iv, 9 (1909).

[3] See above, 67 f.

[4] *Germania*, c. 15; E. Norden, *op. cit.*, 280 f.

[5] Cl. Willers, "Ein Fund von ceraten im freien Germanien," *Numismat. Zeitschr.*, Wien, 1899, 330, 350, and Babelon, "La silique Romain, le sou et le denier de la loi des Francs Saliques," *Journal des Savants*, 1901, 116.

[6] Cf. M. Prou, *Catalogue des Monnaies Mérovingiennes de la Bibl. Nat.* Introduct., xcvi ff.

[7] *Bell. Gall.*, iv, 2.

in return for money.[1] When he agreed, many others came, who threatened war, but were bought off with money.

If the Germans had been familiar with Roman money for a long time and had a sufficient supply of it, they had at first no reason to mint any themselves. They may have avoided this not merely because of technical inability, but because it was very much to their advantage to use the Roman coins, for these were in circulation throughout the wide territories of the great Roman *imperium*. This lack of a coinage of their own, therefore, seems to me to be a sign not so much of a primitive state of culture, as of the special relationship of the Germans to the Romans at that time. As *foederati* and mercenary soldiers in Roman service they had no need to replace Roman coins current throughout the world by their own made at home. This becomes still more comprehensible if, as the East Roman Agathias (sixth century) expressly tell us, they had taken over Roman trading laws.[2] It is in fact a direct consequence of that continuity in cultural development which has been depicted in this book. If the transition came about gradually and from within, with German penetration of late Roman institutions lasting over centuries, and if there were no sudden breach of culture, then this lack of an indigenous German currency appears merely to denote a continuation and adoption of the Roman inheritance.

Yet another political factor enters into consideration here. The German peoples, after their settlement on Roman soil, became members of the *Imperium Romanum*; and they also recognized (as did Clovis) the rule of the Roman Empire in the East, when they had founded their own states after the fall of the Western Empire (476). Here, however, the right to mint their own coinage was not allowed to the subject and federated people. Even in the first half of the sixth century it was a thing unheard of in the East Roman Empire that the Frankish King Theudebert (534–548) should mint coins with his own name and portrait.[3] Procopius expressly tells us that this right belonged to the Emperor alone and was recognized even by the Persians, who possessed only a silver coinage of their own.

It is generally known therefore that, in the various German states, at first the imperial coinage of the Eastern empire was imitated and coins were minted accordingly. The so-called barbarian coins, minted by Germans in imitation of those of Rome, are not only very numerous but often difficult to distinguish from their models. These are to be found in all the different German states. In Italy under the Ostrogoths, Roman institutions and conditions at first remained unchanged,[4] and here the transition can be seen particularly clearly. Theodoric had gold coins struck, both a *solidus* and a *triens* (one-third of a *solidus*), under the name of the Emperor Anastasius, on which at first merely the place of minting was stamped. Then, when in 497 his rule in the West was recognized by the East Roman Emperor, he had his monogram stamped on the reverse at the end of the inscription. He also had silver coins, *siliquae* and half-*siliquae*, minted. They have on the obverse the portrait of the East Roman Emperor, and on the reverse Theodoric's monogram, now in the centre. Copper coins were

[1] Dio Cassius (*Joan. Xiphilin. Epitom.*), lxxvii, c. 14, 3; (Teubner ed., Dindorf), iv, 293 f.
[2] See above, 349.
[3] Cf. Procopius, *De Bello Gotico*, iii, 33.
[4] Cf. J. Friedländer, *Die Münzen der Ostgoten*, 1844, also Soetbeer in *Forschungen z. deutsch. Gesch.*, i, 283 ff. (1862), and C. F. Keary, "The Coinage of Western Europe from the Fall of the Western Empire," *Numismatic Chronicle*, 1878.

already being minted without any mention of the Emperor; they have a figure of Rome with the names of the minting place and the king in full (*DN. Theodoricus rex*). The Ostrogothic kings who followed him have left no gold coins, but numerous silver and copper coins bearing the portrait and name of the Eastern Emperor, but on the reverse either the monogram of the Gothic King or his name written in several lines. The bronze coins already have the portrait of the crowned Gothic ruler, while the reverse, in imitation of the Roman Imperial period, has an image of Victory with the corresponding inscription (*Victoria Augusta*), as, for example, under Theodahad. We see how the political relationships with the Eastern empire are reflected here. The Gothic king limited himself to silver and copper coinage, until he was definitely recognized and had an understanding with the Eastern empire. The Roman model was also followed in the matter of weight. But under Theodoric it appears that lighter gold coins were struck, as we learn from a complaint of the bodyguard at the beginning of the sixth century, who considered themselves to have suffered in the amount and weight of their pay.[1]

The coinage of the Visigoths [2] also was at first closely connected with the Roman system. There are in existence gold pieces bearing the portrait of the Eastern Emperor. The coins minted by the Gothic kings which have come down to us are almost exclusively gold pieces—*trientes* bearing the head of the royal coiner with his name and the title *rex* as a superscription, and various epithets such as *felix*, *inclitus*, *pius*, etc. On the reverse is the name of the minting place, and sometimes a short remark referring to a particular historical event, as for example, *Cordoba bis optinuit*, or *Emerita victori*, etc. The great number of minting places is noteworthy; they are all towns, some of which (the smaller ones) are no longer in existence. King Alaric II (484–507) had gold coins of a lesser weight minted, the acceptance of which was prohibited in Burgundy in King Godomar's time (524 ?),[3] and it seems that the regulation of coinage in Spain at that period was in a bad way, for the Ostrogothic King Theodoric also issued a regulation (523–526) referring to that country, from which we infer that the coiners who ought to have been working for public needs were actually busy in the interest of private people.[4] From late Roman times [5] the abuse of clipping and otherwise damaging good coins of full weight for purposes of gain was prevalent,[6] and people even refused to accept *solidi* of full weight, with the result that their obligatory acceptance had to be legally enforced.[7]

Among the Burgundians a continuity in coinage from late Roman times is clearly apparent. The famous mint of Lyons still continued to exist in the second half of the fifth century, and coins of the Emperor Avitus' time (455, 456) have been preserved from this source.

The same is true of the Lombards in Italy.[8] No coins have come down to

[1] Cassiodorus, *Var.*, i, 10 (507–511), *MG. AA.*, xii, 18.

[2] Cf. A. Heiss, *Déscription générale des monnaies des rois wisigoths*, Paris, 1872, and P. Ch. Robert, *Numismatique de la province Languedoc* (1879) and Keary, op. cit.; Soetbeer's short remarks (op. cit. 285 f.) are quite superseded by the account given by these authors.

[3] *MG. LL.*, sect. i, 2, 120, c. 7.

[4] Cassiodorus, *Var.*, 39, *MG. AA.*, xii, 165.

[5] Cf. Th. Mommsen, *Röm. Strafrecht*, 674.

[6] Cf. Lex Visigot., vii, 6, 2.

[7] Ibid., vii, 6, 5.

[8] Cf. C. Brambilla, *Monete di Pavia*, 1883, and the detailed *Corpus Numniorum Italicorum*, iv 1913: *Lombardia. Zecche Minori*, v, 1914: *Lombardia*, Milan, are especially relevant.

us from the time of the first rulers, but we have some bearing the names of Eastern emperors (such as Mauricius Tiberius, 582–602); these are, however, so roughly minted that they are supposed to have been the work of the Lombards. The earliest coins bearing the monogram of a Lombard king himself come from Rothari, in whose well-known Edict (643) minting is regarded as a royal prerogative.[1] These issues made by the Lombard rulers consist exclusively of *tremissi* (a third of a *solidus*) and reveal clearly differences in political development; in southern Italy Byzantine influences remain in the stamp, while in the north the Lombard characteristics predominate.

The weight of these *tremissi* gradually decreased,[2] as is clearly shown by the thirty-seven found in the excavations at Ilanz in Switzerland in 1904, which belong mainly to the time of Desiderius. They are also of inferior fineness, as their pale gold colour shows. Besides these, silver coins are found from the time of King Perctarit (671–686) onwards. They are very thin planchets, and are *patelliform.* As they are stamped on one side only, they may be considered as precursors of the half-bracteates, and they are very light in weight. There are also a number of *tremissi* bearing no indication of their mint of origin, but stamped with various single letters (*M*, *V*, *T*, *P*, *S*, *C*) and an open hand (? *mancusi*). Attempts have been made to interpret these as the names of the officials of the mint[3] or the name of the mint itself, but the term *mancusi* comes from the Arabic[4]; and the open hand is certainly not to be explained thus.[5] The word *Flavia* which comes before the name of the Lucca mint also precedes the names of other mints after Aistulf's time. The suggestion has been made here that the towns which have the name *Flavia* on their coins were royal in the narrower sense at the time of minting, i.e. they were under the direct control of the king.[6]

An interesting counterpart of the Continental coinage is to be found among the Anglo-Saxons of the British Isles.[7] Here also gold and silver coins were minted in the early period; and besides these there were *stycas* in Northumbria made from a mixture of copper, zinc, and silver. Gold coins are not numerous. They are imitations of Roman and Frankish coins, and some have runic inscriptions. Later, in the eighth century under King Offa, there are also imitations of Arabian *mancusi.* Gold coins were in circulation in Kent at any rate in the second half of the seventh century, as we see from the comparison of Earcongota, the daughter of Earconbert of Kent, a nun at Faremoûtier-en-Brie, with an *aureum nomisma.*[8] The later gold *mancusi* of the time of Offa of Mercia are not the same as this Kentish shilling.[9] The great find at Crondale (Hants) in 1828 brought to light numerous small gold pieces, which clearly are stamped after the pattern of the Merovingian *trientes.* They weigh 19–21 grains (1·23–1·36 grm.).[10] The words *ora* and *marc* are of Scandinavian origin and were introduced by the Danish invaders

[1] c. 242, *MG. LL.*, iv, 60.
[2] For Table of Weights, see Germ. edit., ii², 485.
[3] See Germ. edit., ii², 486.
[4] Cf. Chadwick, *Studies on Anglo-Saxon Institutions* (1905), 11.
[5] Froehner, "Le gant dans la numismatique byzantine" (*Annuaire de la Soc. franç. de numism.*, 1890, 174), thought of the glove which was a sign of feudal dependence.
[6] Cf. W. Kubitschek, *Numismat. Zeitschr., Wien*, 1909, 42 (N.S., 2), 46.
[7] For Bibliography, see Germ. edit., ii², 487, note 47.
[8] Bede, *Hist. eccl.*, iii, 8.
[9] Cf. Carlyon-Britton, "Gold mancus of Offa," *Brit. Numismat. Journal*, v, 56 (1909).
[10] *Catal. of Brit. Mus.*, i, xiii ff.

in the ninth century. They denote not the coins themselves but the weight of gold and silver, as does the word *pund*, from the Latin *pondus*. From these facts we can clearly trace the foreign influences at work in the British Isles.

On the whole, silver coins are more usual in this early period; the term *sceatt* is used for them. Th. Mommsen has observed that in England and Ireland several hoards of silver have been found mainly consisting of *siliquae*, apart from which few silver coins of the post-Constantine period have been discovered in any quantity.[1] Soetbeer concluded from this that in England towards the end of Roman rule silver money was more important and more widely used, even for large payments, than in the other provinces.[2] If we add that the Anglo-Saxon *sceattas* also bear inscriptions after the Roman pattern, a connection with late Roman conditions is clear here, too. These silver coins bear the names of the Anglo-Saxon kings. Their weights vary between 9 and 21 grains,[3] which shows a certain similarity to the weight of the earlier continental silver coinage[4]; they double in the same way as the *siliquae* and half-*siliquae*. In a translation of the Bible *sceatt* is used for the Greek δηνάριον, while the term *scilling* is found for *solidus* in a Gothic document of the sixth century (Naples). In the earliest Kentish laws of King Æthelbert (601–4) a *sceatt* = one-twentieth *solidus*.[5]

The term *penny* (*pending*, *penning*) appears in Ine's Laws (688–695),[6] and refers to silver coins. The earliest surviving pennies belong to Mercia in the middle of the eighth century. Those found in Wessex begin about 800.[7] It is supposed that this new type of penny was introduced from a Frankish model. Most of King Offa's pennies weigh less than 19 grains[8]; under his successors this weight was increased, and under King Alfred in the ninth century it was considerably higher.[8] Keary's theory[9] that the mention of pennies in Ine's Laws is a later interpolation or addition, because no penny had at that time been coined in England, is doubted by Chadwick,[10] and rightly described by F. Liebermann as unconvincing.[11] It is also not impossible that Ine gave this name to the *sceatt*. Moreover, pennies were used as units of reckoning below shillings, so that in Wessex 5 and in Mercia 4 went to a shilling.[12] A Kentish shilling was equal to two and a half Wessex shillings.[13] In the documents of the ninth century the value of large sums in pounds or *mancusi* is usually given in *denarii*,[14] as is the practice in Frankish territory. We also find the term *thryms*, which seems to come from the Latin *tremissis*, but in value it does not resemble either the Roman or the Frankish coin of that name. None of the coins which have been found correspond to it, and it may perhaps be a unit of account.[15] Where the word is used for a monetary value (*North-Leoda Laga*) it is equal to three Mercian pennies.[16] *Mancus*, a term

[1] *Gesch. d. röm. Münzwesens*, 788.
[2] Op. cit., i, 276.
[3] Cf. Chadwick, op. cit., 8.
[4] Cf. below, 364, and Germ. edit., ii², 483.
[5] c. 16, 33, 59, 60, 72; also F. Liebermann, *Ges. d. Angelsachsen*, Art. "Sceatt", ii, 2, 634 (Glossary).
[6] c. 44, 58, 59, 69.
[7] Keary, *Catalogue*, ii, xviii, xxiii; also Chadwick, op. cit., 4.
[8] Chadwick, op. cit., 5.
[9] Op. cit., xx.
[10] Op. cit., 9.
[11] See his article "Pfennig", *Gesetze d. Angelsachsen*, ii, 2, 614 (1912).
[12] Chadwick, op. cit., 12 ff.
[13] Chadwick, op. cit., 19, and Liebermann, Art. "Schilling", op. cit., ii, 2, 640.
[14] Chadwick, op. cit., 19.
[15] Chadwick, op. cit., 10.
[16] Ibid., 20.

first found at the end of the eighth century, means a certain weight of gold. It comes from Arabic, and probably crossed to England when the Moorish power in Spain and the South of France was at its height. Chadwick thinks it possible that it came directly from the Orient, with which Charles the Great traded.[1] It is equivalent to 30 pence.[2] From the ninth century the pound was equal to 240 pence or 12 *orae*, so that 1 *ora* = 16 pence (*denarii*).[3]

Chadwick is inclined to ascribe the differences in Anglo-Saxon coinages to their derivation from two different sources: the Mercian and West Saxon coinages coming from the Merovingian model,[4] while the Kentish originated in England itself with the runic inscriptions.[5] This state of affairs makes it very difficult to determine the relative value of gold and silver in England at that early period. Probably the ratio varied.[5]

We must remember this when we proceed to consider conditions in the Merovingian kingdom. Here, too, there is a link with the Roman system. It is noteworthy that no coinage of Clovis' own has as yet been found. At that time coins were minted in Gaul with the name and portrait of the Eastern Emperor. *Solidi* and *tremissi*, with more or less distorted portraits of the Emperors Anastasius (491–518), Justin I (518–527), and Justinian (527–565), which show obvious signs of Frankish origin or mention a Frankish mint, are by no means rare.[6]

Here also Byzantine influence was decisive from the beginning.[7] The *Lex Salica* reckons 1 *solidus* as equivalent to 40 *denarii*. But we meet with a difficulty in the fact that the excavated coins are of very light weight (0·60 to 1·20 grms.) so that if gold is to silver in value as 14·4 : 1 (as laid down in a decree of the Emperors Arcadius and Honorius in 397, which Justinian incorporated unchanged in his laws), forty of these little silver pieces do not actually equal a gold *solidus* of the time, for the weight of the latter in the Eastern Empire is 4·55 grammes. We must, however, consider the special development which occurred in Gaul. For there, in the first half of the fifth century, as an Edict of the Emperor Majorian in 458 shows, *solidi* were minted, the acceptance of which, owing to their light weight, was forbidden in the public exchequers,[8] and they had no circulation in Italy in the time of Pope Gregory the Great (590–604). There are many *solidi*, especially from Southern Gaul and bearing the names of the Emperors Justin II (565–578) and Mauricius Tiberius (582–602), with a weight of only 3·94 to 3·80 grammes or even less.[9] Deterioration in value also occurred here, so that these pieces are stamped as 21 *siliquae* instead of 24.

The Franks imitated not only the gold coinage but also the silver coinage of Rome. In graves in Belgium, Northern France, and the Rhineland, there have been found both Roman silver pieces of the fourth and fifth centuries emanating from imperial mints, and also Frankish imitations, so like the originals that it is often difficult to distinguish them.[10] Their weight shows that they were modelled on the half- and quarter-*siliquae* of the Romans.[11] Because all

[1] Op. cit., 11, note 5.
[2] Ibid., 23.
[3] Ibid., 24 ff.
[4] Ibid., 60.
[5] See Germ. edit., ii[2], 490.
[6] Luschin, "Der Denar der Lex Salica," *Sitz.-Ber. d. Weiner Akad.*, 163, iv, 22 (1909).
[7] Cf. Hilliger, "Der Denar der Lex Salica," *Hist. Vierteljahrschr.*, 1907, 21.
[8] Prou, op. cit., xxiv ff., and Babelon, op. cit., 118 ff.
[9] Luschin, op. cit., 29.
[10] Cf. G. Cumont, "Monnaie découverte dans le cimetière franc d'Ave-et-Auffe près d'Eprave," *Annales de la Soc. d'archéol. de Bruxelles*, 1892.
[11] Prou, op. cit., c ff.; Babelon, op. cit., 116.

the known Frankish silver coins of the time are much too light for the *denarius* of the *Lex Salica*, and also because Gregory of Tours does not use the term *denarius*, it has been assumed that the Franks in the sixth century had no knowledge of the *denarius*.[1] This argument *ex silentio*, however, does not justify such a conclusion. It should be emphasized that Gregory often speaks of *argentei*, and avoids the expression *solidus*, using *aureus* in place of it.[2] I have already suggested earlier [3] that the *denarius* of the Salic Law is connected with those small silver pieces, so numerous in French excavations, which have a weight of only 0·62 to 0·80 grammes. But there are also Roman silver coins, with the name and portrait of the Emperor Justinian, weighing only 0·52 to 0·73 grammes.[4] If we reckon forty to the *solidus*, this would give 24·80 to 32 grammes; and this would make the Frankish gold *solidus* weigh 2·48 to 3·20, if gold was to silver as 10 : 1 (which I think probable in view of Anglo-Saxon conditions).[5] Actually a *tremissus* of the time of Clothar II (613–628) has been found, weighing only 0·88 grammes, which would make the *solidus* 2·64.

From the beginning of the seventh century we are on firm ground, as the excavations of *denarii* can be dated with certainty. A silver coin of the time of King Charibert II (629–631) weighs 1·16 grammes.[6] There can be no doubt that at the time there was a heavier silver coinage, due to the introduction of the *denarius*.[7] A change in Frankish coinage took place in the first half of the seventh century. The decay of the old Merovingian coins, which can be traced even at the end of the sixth century, necessitated a reform. New and much heavier silver pieces were coined, of which only 12 went to the Frankish *solidus*. This method of reckoning is known in the Angers formulary. The new coins were apparently equivalent to the much depreciated gold *solidus* in use in the Frankish Kingdom.[8] This theory enables us to dispense with the old attempt at explanation, which assumed that there was a sudden reduction of all payments from 40 to 12 *denarii*.[9] Actually it is a question of two quite different *denarii*; and the new one (12 to a silver shilling) was not identical with the old (one-fortieth of the gold *solidus*).

Hitherto this ancient Frankish *denarius* has been valued much too highly. My much lower valuation is supported by the hitherto unexplained fact of the amazing height of the fines in the Salic Law, which surprised earlier scholars.[10] The reason for these apparently " double " reckonings now becomes clear. Seebohm correctly pointed out that they were originally calculated in *denarii* and only later in *solidi*.[11] The number of shillings was added, Brunner says, to distinguish the *denarii* as such (40 being equal to a *solidus*). Here, I think, is the best proof of my assumption that the value of the earlier and later *denarii* was not the same. We can now understand the nature of this transition more clearly. The rejection of the

[1] *DRG.*, i², 312, note 4.
[2] Cf. H. Brunner, *Zeitschr. f. RG.*, xxix, 144.
[3] *Wirtschaftsentwicklung der Karoling.-zeit*, ii, 286 f.=2nd edit., 297 f.
[4] Cf Luschin, op. cit., 6.
[5] See above, 364.
[6] Prou, op. cit., 65, Table i, 29.
[7] Luschin, op. cit., 40 ff.
[8] Cf. also Luschin in *N. Archiv.*, xxxiii, 458.
[9] See Germ. edit., ii², 494, note 94.
[10] Cf. K. v. Richthofen, *Zur Lex Saxonum*, 370 f., and Boretius, " Zur Lex Saxonum," *Histor. Zeitschr.*, xxii, 156.
[11] *Vierteljahrschr. f. Soz. u. WG.*, i, 175; also Brunner, *Zeitschr. d. Savigny-Stiftung f. RG.*, xxix, 141 f.

Gallic *solidi* in Italy in Pope Gregory the Great's time proves that these had depreciated in value at the end of the sixth century.[1] On the other hand, a reform of the coinage had already been effected under King Charibert II (629–631); the greater weight of the *denarii* of his period which have been excavated reveal this. Thus the first third of the seventh century was probably a period of transition. Luschin also ascribes the change to the reign of Clothar II (613–629), and according to his view the general re-introduction of the *denarius* among the Franks dates from the same years.[2] At any rate there must have been important reasons for introducing such a measure. If we remember that Byzantine influence was at work among the Franks in the early period, we can hardly be wrong in assuming that to it was due the decisive impetus on this occasion also. We know now that the Emperor Heraclius (610–641) had since 615 adopted a new coinage and had caused a heavier silver coin to be minted, the *νόμισμα ἑξάγραμμον*, by which payments were reduced to half those expressed in terms of the old coins.[3] Hilliger remarked that the differentiation of the *solidus*, found later among the Franks, into a *solidus auri* and a *solidus in argento*, is on the Byzantine model.[4] I think it probable that the same is true of this coinage of heavy *denarii* in the Frankish kingdom. This is confirmed by the fact that the lighter Frankish gold *solidi* (of 20 *siliquae*) also bore the Emperor's portrait.[5] It would be remarkable if the silver coinage had not been copied from Byzantium at a time when we have evidence of close political relations with the East[6], and of the willing submission of the Frankish king to that influence.[7]

The view that the new Frankish reckoning of one *solidus* to 21 *denarii* goes back to the silver standard of Austrasia is still generally held. The tribes on the right bank of the Rhine are said always to have been accustomed to reckon in this way. But the passage in the Ripuarian Law (Tit. xxxvi) on which this argument is based cannot be taken as reliable evidence, as it has been proved to be a Carolingian interpolation. Prou was right in rejecting this whole theory; he considers it improbable that this influence was felt in the eighth century, seeing the Franks, at a much earlier date when it must have been stronger, had adopted the Roman gold-standard as the basis of their coinage (sixth century).[8] He shows that the Austrasians not only had gold from the time when they first minted, but also that Austrasian mints were the first to coin gold *trientes*. But the evidence of the Ripuarian Law (Tit. xxxvi) ought not to be entirely rejected. Brunner assumes that it is due to an eighth century revision.[9] The reference to a fixing of value which is described as *antiquitus* would therefore take it back to pre-Carolingian times,[10] and Hilliger has produced other evidence from the first half of the eighth century which proves the same thing, i.e. this way of reckoning may in fact already have been introduced in the seventh century. Various scholars have derived the Frankish silver shilling of 12 *denarii* from the old gold *tremissus* (one-third of the *solidus*). It was a way out of a difficulty which we do not

[1] *MG. Epp.*, I, 389 (vi, 10), of the year 595.
[2] Op. cit., 48.
[3] *Chron. paschale* (rec. L. Dindorf, 1832), I, 706.
[4] *Hist. Vierteljahrschr.*, 1907, 19.
[5] Luschin, *Der Denar d. Lex Sal.*, op. cit., 38.
[6] Cf. Fredegarius, c. 62 (under 629), *MG. SS. rer. Merov.*, ii, 151.
[7] Ibid., c. 65, op. cit., 153.
[8] Op. cit., p. cv.
[9] *Zeitschr. f. RG.*, xix, 83.
[10] See my *Wirtschaftsentwicklung d. Karolingerzeit*, ii, 299 f.

encounter to-day, as it has been proved that in consequence of the depreciation of the old gold *solidus* (= 40 *denarii*) it was now reckoned as equivalent in value to 12 only of the new heavier *denarii*.[1] The decisive factor is the increase in weight of the *denarius*, which has been proved definitely by excavations.[2]

This alteration in the Frankish coinage used to be described as a transition from a gold to a silver standard.[3] Actually there was a double standard after as well as before the change. The usual explanation of the causes of this reform [4] is also incorrect. Gold did not disappear out of Gaul owing to a scarcity of new supplies, consequent upon the cessation of trade from West to East. For the Edict of the Emperors Gratian, Valentinian, and Theodosius also incorporated in Justinian's laws (iv, 63, 2), shows that the flow of gold from the Eastern Empire to the barbarians must have been very great and that it was due to the trade with the West. Indeed it is clear that the barbarians must have possessed large stocks of gold, since not only was it forbidden to pay them in this metal, but the instruction was given that they should be persuaded to give up their gold. It is obvious that the theory of a scarcity of gold is merely hypothetical, and is influenced by the older theory of the lack of culture and the cessation of all trade among the Germans; but it is untenable in the light of existing documentary evidence. Gratian's decree makes it evident that in his period gifts and tribute by the Emperors to the rulers of those same barbarian tribes took the form of gold payments measured in hundredweights.[5] The finds of coins reveal that there was a comparatively large number of Roman and Byzantine gold coins of the fifth and sixth centuries in Northern Germany and in the Baltic lands. O. Montelius describes this source of supply as the reason for the northern wealth of gold, and says that it came direct from the South, through North-East Germany (where great finds have been made on the Vistula) as far even as Sweden.[6] There is much evidence to prove that precious metals must have been plentiful in Gaul at the end of the sixth century, not only among the rulers but among the nobles and rich citizens. In addition I may recall my previous remarks about wealth gained in trade (e.g., by the citizens of Verdun, who were not exceptional) and the rich annual gifts of the nobles to the king.[7] The hoards of money collected by certain individuals were now once more put into circulation, especially in the case of the gifts frequently made by the kings to notable and influential men and to churches and monasteries, who for their part passed the money on in purchases of various kinds, such as lands and serfs, thereby maintaining the circulation of money.[8] It is not true that from the middle of the sixth century there was no great flow of gold into the Frankish kingdom, whereas there was a continual flow into the Orient by way of trade.[9] The Arabs carried Byzantine gold into Italy and Spain (*Byzantius Sarracenatus*). But this is true not only of those countries: in Southern Gaul numerous gold pieces were

[1] Luschin, *N. Archiv.*, xxxiii, 458.
[2] Cf. Prou, op. cit., cviii; Hilliger, 1907, 27.
[3] Prou, op. cit., p. xi and cv f.; *Denar d. Lex Sal.*, op. cit., 52.
[4] Op. cit., ii, 307, iv, 252 ff.; Prou, op. cit.; Vinogradoff, *Zeitschr. f. RG.*, xxiii, 135 f.; Luschin, *Denar d. Lex*; *Sal.*, op. cit., 52.
[5] Op. cit., 1, 267.
[6] *Kulturgesch. Schwedens* (1906), 228 f.
[7] See above, 344 also 333.
[8] Soetbeer, op. cit., 306.
[9] So Luschin, *Denar d. Lex Sal.*, op. cit., 52, note 3.

circulating in the second half of the sixth and the first half of the seventh centuries.[1]

Thus the ever popular view that after the reform of the Frankish currency at the beginning of the seventh century the minting of gold ceased, that gold was used only in hoarding treasure,[2] and that the newly-created Frankish *denarius* was meant to replace the scarcity of gold, is wrong. We need only open Prou's catalogue to see that gold was still minted in the second half of the seventh and the beginning of the eighth centuries.[3] To this we may add the information given in the *Life of St. Eligius* (d. between 659 and 665), which is, however, of Carolingian origin, about the refining of the gold paid as taxes to the king.[4] A considerable part at least of these taxes must therefore actually have been paid in coined gold, even in the second half of the seventh century.[5] The number of places in the Frankish kingdom where coins were minted increased during the seventh and eighth centuries,[6] and the names of these numerous mints are mainly preserved upon gold coins (*trientes*). Too much attention has been paid to the coins struck under the king's name, and it has not been observed that there were many more without it. In the great mass of Merovingian coins only the name of the mint-official and the mint itself are recorded.[7] Prou has established the fact that these mint-officials first began to sign their coins, both gold and silver, in the second half of the sixth century.[8] Most of these numerous *trientes* belong therefore to the seventh and the first half of the eighth centuries.

On the other hand, we must have done once and for all with the view that all the gold flowed from West to East, and that Byzantium and the Eastern Empire were, so to speak, a great hoard of gold. Nothing could be farther from the truth. We have quite definite information on the point for the time of the Emperor Heraclius (610–641). The lack of ready money was sorely felt in the East at that time, for the great wars swallowed up enormous sums. Therefore in 613 (the conquest of Damascus), and in 622 (the campaign against Persia), Heraclius claimed the treasures and gold supplies of the Church for state purposes.[9] The scarcity of money under this Emperor was very acute. On account of this lack of gold and silver he also undertook the minting of heavy silver pieces, by which the recipients of *ῥόγαι* felt themselves injured, because the number of coins given to them was reduced by half.

In view of these facts the reform of the coinage in the Frankish kingdom is seen to be not so much a consequence of the scarcity of gold or of a passive balance of trade, as an attempt to improve the currency.[10] The new heavy *denarii* were not intended to replace gold, but to serve the new and increasing claims of commerce and trade, which were much further developed than was formerly supposed.[11] Their tendency is to increase in weight.[12] A heavier coinage always

[1] See Germ. edit., ii², 501.
[2] See Heck, *Vierteljahrschr. f. Soz. u. WG.*, ii, 516, note 1, and Luschin, op. cit., 52, note 3.
[3] See for example the mint of Marseilles, Prou, op. cit., 310 ff., No. 1413–1426, – op. cit., 17 ff. No. 67–71.
[4] See the new edition in *MG. SS. rer. Merov.*, iv, 681.
[5] See below, 377 f.
[6] Prou, op. cit., *Introd.*, lxvi f.
[7] Prou, op. cit., *Introd.*, lxii.
[8] Ibid., lxxxi.
[9] Cf. Gerland, "Die persischen Feldzüge des Kaisers Heraklius," *Byzantin. Zeitschr.*, iii, 340 (1894).
[10] Op. cit., 48.
[11] See above, 339 ff.
[12] Prou, op. cit.

has a favourable effect on prices. Probably the working of the silver mines of Melle in Poitou was begun at that time,[1] and enabled these heavier coins to be produced.

We shall be able to form a more correct estimate of these events if we consider more closely another problem which is the great riddle of Merovingian numismatics, viz. the right of coinage. As we have seen the number of coins bearing the king's name is relatively small. Besides these there are also what may be described as Church coins (*moneta sancti N.* or *racio ecclesie*); but most of them bear only the mint-master's name and the place.[2] It has therefore been thought that there was no royal prerogative of coinage among the Merovingians, and that minting was freely allowed under the personal security of the person who ordered it and of the mint official.[3] Prou thinks that not only the king but also the Church had the right to issue coins; and that the latter had coins minted in the villages and homesteads (*villae*) belonging to it. This corresponded to the position of the great lay lords of the time. Was the right of coinage, then, an appurtenance of such estates? I think we must not go too far in this direction. The fact that numerous and often small places are mentioned on the coins does not prove that all these places were regular mints. It has, indeed, been thought that the mint-masters plied their trade wandering from place to place.[4]

After what has been already said about the meaning of *vicus*, *castrum*, and *mallus* as centres of the folk-communities, and their importance in trade and commerce, we can no longer think simply in terms of purely seigneurial and estate activity, in the sense presumably of the regulations of the *Capitulare de villis*. In many of these places there were royal palaces and customs houses. The fact that the coins bear their names proves that trade in these regions created an economic demand for coins. If it were only a question of seigneurial *villae* this would hardly be comprehensible, for the great estates were in the best position to supply their domestic needs by their own production.[5] Moreover, the fairly frequent inscription *racio* on the coins of the time is not to be explained, as hitherto, by saying that minting was carried on "for the accounting" of the great estate in question. *Racio* at that time implied administration or office of administration, and revenue,[6] e.g. there was the administration of the *fiscus* (*racio fisci*) and the administration of the Church (*racio ecclesie*).

I shall now try to solve this riddle of early medieval numismatics in another way. From many places we have coins, some of which bear the king's name, others the inscription *racio ecclesie*, and others only the mint-master's name with the name of the town.[7] The same mint-master appears on coins with the name of the king, and on those of the local church.[8] In other towns we find the same mint-master occurring on pieces bearing the king's name, and on palace coins and coins that only have the name of the town.[9] From Vienna we have a coinage with the Emperor Tiberius *de officina Laurienti*,[10] and a *triens* bearing only the name of the place and Laurent (*ius*).[11] Similarly, from Clermont-Ferrand there

[1] Cf. Richard, *Revue numismat.*, iii, Ser. ii (1893), 194 ff., esp. 195.
[2] Prou, op. cit., liv ff., also lvii ff.
[3] See Germ. edit., ii[2], 503.
[4] See Waitz, *DVG.* ii, 311, also Lavchin, op. cit., 39.
[5] See above, 353 f.
[6] Prou, op. cit., li ff.
[7] See Germ. edit., ii[2], 505, note 157.
[8] Cf. Gemellius for Tours; Prou, op. cit., No. 303, 321 (St. Martin).
[9] For example Elgius in Paris; cf. Prou No. 686–690, 693–6 (Pfalz- M.), 707-711.
[10] Prou, No. 1303. [11] Ibid., 1304, 1305.

are coins struck in the name of King Theodebert II (595–612),[1] and others bearing the name of the same mint-master, together with the name of the place.[2] The same is true of Limoges under Dagobert I (629–639),[3] and of Bennesac (Lozère) under Charibert (629–632).[4] In Poitiers the same mint-master (Friderico) appears on coins which have only the place-name, and on others with *racio ecclesie*.[5] These facts teach us that the same mint-masters minted coins for the king, for churches, and monasteries, and for the state. It is not true that the great estates had their own regular mint-masters, as Prou thought probable.[6] On this point we also possess information about Spain from a description of the time of King Theodoric the Ostrogoth (523–6); the king objects to the abuses which have crept into the country, in that mint-masters, who ought to be working for the public benefit, are confining their activities to the profit of private people.[7]

Mint-masters belonged to the precious metals industry and were gold- and silversmiths; hence we may use documentary evidence about these persons in order to elucidate the problem. Particular note should be taken of the *faber aurifex qui publice probatus est* mentioned in the Alemannic Law.[8] This general and "public" recognition presupposes a position in which, it is stated, the man has turned out well. I may recall the fact that the expression *publicus* in the Merovingian period is often used in the sense of *regius*.[9] Thus it is possible that the mint-masters required some such approval by the public authority for the practice of their industry, especially if coinage were a royal prerogative, as I think it likely that it was. Furthermore we must consider the nature of the goldsmith industry. In it hired labour played an important part, but this meant that the goldsmiths worked up raw materials given to them by private customers, and were paid for their work.[10] Both in the Burgundian and in the Visigothic Laws there are decrees concerning the punishment of those workers for wages who are guilty of fraud in keeping back material, and in both the gold- and silversmiths are especially mentioned.[11] Thus we may suppose that the making of coins was also wage work. This would easily explain the expressions *racio fisci*, *racio ecclesie*, or *basilici*.

It is important that we have one royal decree from the earliest Carolingian time, which refers back to these earlier conditions. Here the king, in virtue of his royal prerogative, fixes the weight and number of the coins, and decrees that the mint-master may retain one shilling out of every twenty-two (which should be made out of one pound of metal), and should hand over the rest to the *dominus* to whom they belong.[12] Here we also have the key to the explanation of the Merovingian right of coinage and the conditions under which it was exercised. We see that even then it was possible not only for the king, but also for private people, to give metal to the mint-master to be coined at their expense, even though a royal prerogative undoubtedly existed. The king fixed the monetary standard and the size of the coins, and the pay for the mint-master's work. There is no

[1] Prou, ibid., 1713.
[2] Ibid., 1717, 1722.
[3] Ibid., 1934: 1941, 1942.
[4] Ibid., 2060: 2069, 2070.
[5] Ibid., 2188: 2225.
[6] Op. cit., *Introd.*, lx.
[7] Cassiodorus, *Var.*, v, 39.
[8] lxxxi, 7; *MG. LL.*, iii, 73.
[9] Cf. J. Tardif, *Etudes sur les institutions*, 208, notes 2, 3, 5.
[10] See above, 336.
[11] Lex Burgund., xxi, 2; Lex Visigot., vii, 6, 4. See above, 335, 336.
[12] *MG.*, Capit. i, 32, c. 5.

reason to doubt that the same process was customary in Merovingian times. As we have seen, the first Caroligians modelled themselves on the preceding period in all their economic measures. A glance at later developments will enable us to understand the whole matter. Even in the period of territorial coinage an association (*Münzerhausgenossen*) was given the duty and privilege of minting all the coins, according to conditions laid down by the holder of the royal prerogative.[1] Moreover, in the Merovingian period there were several coiners who minted together, or side by side, as in Lyons, Châlon-sur-Saone, and other places. We may conclude that it was an industrial combination (*Genossenschaftsbetrieb*). The extraordinarily large number of places mentioned on coins[2] must not mislead us, for in the time of the first Carolingians coins were obviously made in many different places, as we learn from a capitulary of Charlemagne (805).[3]

In the Merovingian period we repeatedly hear of an actual mint (*officina*), both on the coins themselves[4] and in documents. St. Eligius went to be taught by the mint-master Abbo at Limoges; he tells us that Abbo was director of the state mint there,[5] which shows that there was a definite organization of state coinage. The mint-master Priscus, whose name appears on certain coins, is to be identified with a particular Jew Priscus (d. 582), mentioned by Gregory of Tours,[6] from whom King Chilperic (d. 584) used to buy costly wares.[7] The Domnolus mentioned with Priscus on a coin of Châlon-sur-Saone is the *domesticus* named by Fredegarius in 585.[8] This view derives additional support from the fact that according to the *Vita Eligii* a *domesticus* works with the *monetarius* in refining and preparing the gold received as taxes.[9] Thus we have further help towards solving the problem of the control of coinage. Obviously, the coinage was farmed to Priscus, just as later on other rich merchants who seemed suitable for the purpose (for the supply of material required large sums of money and special conditions and opportunities) farmed the mints.[10] At the same time we see that their activities were subject to the control of the royal finance officials. In this connection I should like also to identify another mint-master who appears on coins of Tours[11]; here he is called "Domnigisele". But Gregory of Tours often mentions a Domigiselus, who was sent as ambassador to Spain by King Chilperic to supervise the outfit and dowry of the king's daughter.[12] On another occasion Gregory speaks of him and the other *duces et camerarii*.[13] This points definitely to an official of the royal treasury or financial administration. Moreover, the name Ebroinus found on coins[14] should be noted in this connection. It has, probably rightly, been identified with the well-known mayor of the palace,[15] an office which was important in the administration of royal finance. He also appears to have had charge of other fiscal rights.[16]

[1] Cf. Luschin, *Allgemeine Münzkunde u. Geldgeschichte des M.A. u. d. neueren Zeit* (1904), 85 ff.
[2] See the list in Prou, op. cit., lxxxiii.
[3] *MG.*, Capit. 1, 125, c. 18.
[4] Cf. Prou, No. 87 (Lyons), No. 1303-5 (Vienne).
[5] *Vita S. Eligii*, i, 3; *MG. SS. rer. Merov.*, iv, 671.
[6] Pontou d'Arnecourt, *Déscription raisonnée des Monnaies Mérovingiennes de Chalons s.S.*, Paris, 1874, 92 ff., and in *Annuaire de la Soc. Française de Numism.*, vi, 76, 82 (1882).
[7] Gregory of Tours, *Hist. Franc.*, vi, 5.
[8] Luschin, *Denar d. Lex Sal.*, op. cit., 27 f.
[9] *MG. SS. rer. Merov.*, iv, 681.
[10] Cf. Luschin, *Allgemeine Münzkunde*, 86.
[11] Prou, No. 313, 314.
[12] *Hist. Franc.*, vi, 18.
[13] Ibid., vi, 45.
[14] Prou, No. 798.
[15] Prou, op. cit., cix.
[16] Waitz, *VG.*, ii, 2^3, 92.

The view of some scholars that coinage was freely allowed in Merovingian times is also contradicted by the fact[1] that the mint-masters were probably subordinate to a *monetarius praecipuus* or *primus*, as coins of St. Remy seem to indicate.[2] They would then be commissioned by the king and bound by his regulations. The latter were usually carefully obeyed, as we see from the technical uniformity of Merovingian coinage, which, in spite of the numerous mints, is much superior to the desultory specimens of later times.

As early as the Merovingian period the Jews appear to have been closely connected with this industry; the Jew Priscus has already been mentioned. They certainly played an important part in financial control among the Visigoths. The third Council of Toledo (589) opposed this and demanded their removal.[3] Their position in other professions under the Merovingians, as rich merchants and traders, especially in ornaments and costly goods,[4] makes it not unlikely that they often farmed the mints there too. This is confirmed by a decree of the Carolingian period, the well-known *Capitulare de Judaeis* which orders that no Jew shall have a mint in his house.[5] The decree has not hitherto been clearly understood and now takes its right place. Moreover, we have a demand from the Council of Mâcon (583)[6] that the Jews should not be entrusted with the administration of customs.

Finally, a word on the bullion standard. As we know, this existed in the Roman Empire, but we have hitherto had no evidence of it for the Merovingian period.[7] I think I can produce an example now, from Gregory of Tours. He describes in detail the Saxon invasion of Gaul in 572 and the plundering of the Avignon district. When the Saxons reached the Rhône the Frankish Duke Mummolus opposed them, and forced them to ransom themselves with a large sum of money. It is then related[8] that for this purpose they handed over *regulas aeris incisas pro auro* in Clermont-Ferrand. So far no one has explained the important word *regulas*.[9] Any numismatist, or anyone familiar with numismatic terminology, can however understand it at once. *Regulas* is the unminted metal, the so-called "mint-king" from which the separate chips are taken for the coinage. The context of the passage shows that this view is correct. It has just been explained that the Goths paid *multa nummismati auri milia* for their freedom. Here therefore there is an antithesis to minted gold. We may in fact think of gold bars. These were *incisae*, i.e. stamped with a mark. Thus we can understand the rest of Gregory's story. No one who saw them could have any doubt that they were *aurum probatum atque examinatum*, as they were also the colour of gold. In reality they were only bronze and the Franks were deceived: *aurum dantes et aes accipientes.*

We see therefore that gold bullion bearing this kind of legal mark was customary in the Merovingian kingdom and was in general circulation, since

[1] See Luschin, *Denar d. Lex Sal.*, op. cit., 23; but against his explanations, see *Allgem. Münzkunde*, 82 f.
[2] Prou, op. cit., No. 1047. Is the reading certain?
[3] Cf. H. Graetz, *Die westgot. Gesetzbebung in betreff der Juden* (1858), 7.
[4] See above, 344, 356, 371, note 7.
[5] *MG.*, Capit. i, 258, c. 3; "ut nemo Iudeus monetam in domo sua habeat."
[6] *MG.*, Concil., i, 158, c. 13.
[7] Cf. Luschin, *Allgem. Münzkunde*, 82, § 5.
[8] *Hist. Franc.*, iv, 42.
[9] See Germ. edit., ii², 512.

it was accepted as payment, and its implication was obviously understood. Here, again, continuity with the organization of the late Roman empire is apparent.[1] The Franks also took over the bullion standard from the Romans.

(2) Money Economy

The early medieval period, up to and even including the Carolingian age, has been regarded by almost all economic historians as a time when natural economy prevailed and when money economy was almost entirely absent. This view was to some extent connected with the various theories which were held concerning the economic activities and the civilization of the Germans. If the latter were a primitive and purely agrarian people, then within that modest and completely isolated "household economy", where each man produced all his scanty requirements for himself, money would appear to be quite unnecessary. The little that a man needed from without could be obtained by bartering his own agricultural products. At a time when there were presumed to be no towns, or when such as did exist were of little economic importance for the community, and when the great estates were becoming more and more dominant, there was no reason to introduce money transactions in trade and industry, since they existed only within the framework of those great estates and were unimportant at that. This uniform picture seemed to be borne out by Tacitus' accounts of the peculiarly German disdain of money and their substitution of cattle for coinage as a medium of exchange.[2]

Almost all the hypotheses from which these theories sprang have, one after the other, been proved recently to be untenable.[3] Let us examine the conditions in more detail. For Italy recent research has to some extent cleared up the question. G. Salvioli in 1901 made a special study of Italian economic conditions in the early period.[4] One of the chief results of his research was to establish the fact that Italy then, as in the preceding Roman period, was a land of towns, with an urban civilization and economy.[5] He points out that the municipal organization of the Romans was preserved and respected by Ostrogoths and Byzantines. Ostrogoths and Lombards used the Roman towns as the main pivots of their rule. The town was the centre of industry and trade, and the country was economically dependent on it. Agricultural produce was brought to the towns who subsisted on it, and in return the countrymen took away the industrial products which they required. The "household" economy did not in any way impede this economic connection with the town, for numerous articles which it needed could only be obtained there.[6] Even after the Lombard invasion there were merchants in Italy.[7] A passage in the letters of Pope Gregory the Great [8] points to a decrease in the number of industries

[1] The expression *probare* is a Roman technical term (*denarius probare*), see Pliny, *Hist. Nat.*, 33, 132. Also Norden, op. cit., 281.

[2] Germ. edit., ii², 514.

[3] See Germ. edit., ii², 515.

[4] "Contributi alla storia economica d'Italia durante il medio evo," *Giornale di scienze naturali ed economiche* (Palermo), vol. xxiii.

[5] Op. cit., 35.

[6] Ibid., 75.

[7] E. Mayer, *Italien. VG.*, 1, 87 (1909).

[8] xi, 16: "ut ipsa una statio, quae in Roma civitate remansit, eius temporibus claudi non debeat."

carried on for money, but does not imply that this kind of trade ceased entirely. "Italy never went over to a system of pure natural economy." Later on, in the eleventh century, when there is proof positive of the existence of banking, the trade of Western Europe appears to be concentrated in Italy. The fact discussed above,[1] that in the Lombard period, at the beginning of the eighth century, the *negotiatores* were a class graded according to their wealth, and liable for military service corresponding to its measure, proves beyond doubt that this view is correct; nor must it be forgotten that the Jews were money changers, bankers, and moneylenders.[2] But the situation can be still further clarified. The Byzantine rulers, after the collapse of Gothic rule in Italy, introduced a series of new and sweeping economic measures which deserve especial consideration. After peace was made in 555 for Italy and Sicily, the Emperor Justinian allowed a five years' moratorium for all loans negotiated up to the invasion of the Franks (552–3). After this time was up, the debtor had the right either to offer half the loan to the creditor, or to relinquish half his property. Justianian says himself that he made this decree "at the request of all Italy".[3] The view that the decree was chiefly promulgated for the protection of the landowning class seems to me to be open to contradiction in view of two of the regulations embodied in it.[4] If articles given as pledges for the debt had perished in the collapse of Italy, the debt was to be cancelled, the creditor lost his claim, and the debtor lost his action for the return of the security (*actio pigneraticia*). If, however, the creditor sought to conceal the pledge, out of desire for gain, and alleged that it had perished, for the obvious reason that it was worth more than the debt itself, and if the debtor could prove this, then the creditor had to give up the pledge and cancel the debt.[5] It is quite clear that this measure aims at protecting the debtor and not mainly the creditor. It shows how the mass of the population, the small people, who obtained credit by means of pledges, were exploited by moneylenders. These were probably the merchants. If any doubt as to the intention of the decree still persists, it will be settled by the prohibition of loans at compound interest which is also found among its regulations. Thus it is plain that the practice of money-lending was widespread and that in time of peace the population must have found it possible to pay in money. There is no mention anywhere of payment in kind.

There were, therefore, urban moneylenders and merchants, who must obviously be considered as war profiteers, since they openly profited from the economic scarcity caused by war. But how could they have bought up such quantities of corn, if they were not already wealthy capitalists? If the landowning classes had really played the dominating part in economic life assigned to them by the manorial theory, then this would doubtless have been the most advantageous moment for them to sell their agricultural and other produce. Are we seriously to believe that during the war, and at a time when there was a big demand for corn, their estates produced little or nothing? The letters of Pope Gregory the Great (590–604), of which a single one has been used as the basis

[1] See above, 342 f.
[2] See below, 376 f.
[3] *MG. LL.*, v, 175: "universae quidem Italiae nos oblatae preces generaliter commoverunt.
[4] Hartmann, *Gesch. Italiens*, 1, 350.
[5] Op. cit., Biener, in *Zeitschr., f. geschichtl. Rechtswiss.*, v, 354 f. (1825). A new edition of the text in *Corpus Jur. III. Novell.*, ed. Schoell, 803.

for sweeping conclusions about the absence of a money economy, are, taken as a whole, the clearest evidence against these untenable hypotheses. For they show not only that at this time trade flourished in the Italian towns,[1] but in particular that business was very largely transacted in money. Above all, they prove that there were Jewish communities in various towns, and even in the smaller ones.[2] In Palermo the Jews were not concerned only in maritime trade. They received money for this business from various persons, including even papal officials, on loan against promissory notes (*cautiones*)[3], and in the rest of Sicily Jews undertook monetary transactions on a considerable scale, in which Christian widows were also involved.[4] The Jews of Naples bought slaves in the markets of Gaul, partly on commission, for officials of the state administration,[5] for which purpose they made use of their fellow-believers in that country (e.g. in Narbonne).[6] The Pope himself caused the gold which he drew from the Gallic *Patrimonium* to be invested in goods purchasable there, such as clothes and Anglo-Saxon slaves, in order to avoid loss on the exchange,[7] as the coins had not full purchasing value in Italy.[8] We see that in Gaul, too, there was no purely natural economy. The revenues from the Papal possessions were paid in money (*solidi*) and were used for purchasing necessaries, such as clothes, in the markets. I have already shown that the Jews carried on trade and were concerned in money transactions in the Visigothic kingdom, in Spain, and in the South of France [9]; and these documents afford further proof of the fact, for Pope Gregory's letters mention them in Narbonne [10] and Marseilles.[11]

Besides the Jews, the clergy, too, were concerned not only with trade but also with money transactions, and the Council of Illerda opposed this.[12] The frequent occurrence of money loans is indicated in the laws of King Euric (466–485) where, following the late Roman method, the rate of interest was fixed at a maximum of 12½ per cent[13], and creditors were forbidden to exploit the poverty of the borrower by their exactions. Evidence of the wide extent of a money economy is also found in the regulations (mentioned before in another connection) [14] concerning the rejection of coins which were below standard. It is obligatory to accept coins of full value (*solidi* as well as *tremissi*), but at the same time the lawgiver finds it necessary to impose punishments on those who demand special payment for exchanging coins.[15] Here the late Roman law was taken as a model.[16] Among the Burgundians we find similar regulations concerning the duty of accepting gold coins of full weight,[17] the seller who refuses being threatened with the loss of his wares.

Similarly, in Gaul both Jews and clergy were already in the sixth century concerned in the money business. In 538 the Council of Orleans was obliged to forbid all clergy, from deacons upwards, to lend money at interest or to trade,

[1] Cf. for Rome: vi, 10 (595), vii, 37 (597), *MG. Epp.*, 1, 388, 485; for Naples: ix, 104 (599); ibid., ii, 111; for Sicily, i, 42 (591); ibid., 1, 67.
[2] See Germ. edit., ii[2], 519, note 233.
[3] ix, 40 (598); op. cit., ii, 68.
[4] i, 42 (591); ibid., 1, 66.
[5] ix, 104 (599); ibid., ii, 111.
[6] vii, 21 (597); ibid., 1, 464.
[7] See above, 364.
[8] vi, 10 (595); ibid., 1, 388.
[9] See above, 344.
[10] vii, 21 (597); op. cit., 1, 464.
[11] i, 45 (591); op. cit., 1, 72.
[12] c. 19. Aguirre, *col. Concil. Hispaniae* ii, 193 (1753).
[13] c. 285, *MG. LL.*, sect. i, 1, 10.
[14] See above, 361.
[15] Lex Visigot., vii, 6, 5 (Recessvind. Ervig.), *MG. LL.*, sect. i, 1, 311.
[16] Cf. *Cod. Theodos.*, ix, 22.
[17] Lex Burgund., Extrav., xxi, 7 (501), *MG. LL.*, sect. i, 2, 120.

like professional merchants, out of greed for "filthy lucre".[1] The Council of Mâcon (583) decreed that Jews should not be customs officials.[2] And the Council of Clichy (626) busied itself also with this question; bishops, priests, and deacons were forbidden to exact interest from their debtors.[3] The prohibition of the acquisition of filthy lucre reveals the deeper meaning of this decree. The evidence of money-lending[4] afforded by a passage in the records of the Synod of Orleans (which I quoted earlier), is borne out by other sources of the time. Waitz has produced numerous examples from the Merovingian formulae which show that the term *beneficia praestita* was used in the sense of money-lending.[5] Not only do these prove the accuracy of this interpretation but also numerous other passages in the formularies[6] make it clear that moneylending was a common feature of everyday commerce, and was supposed to be conducted according to the rules laid down in these formulae. The antithesis drawn between the clergy and the professional merchants in this conciliar decree shows, moreover, that here the higher clergy are forbidden to do something which the laity and especially the professional merchants often did, and which even the lower clergy might do. In fact, we have proofs that the latter actually carried on business for profit, e.g. the lector in Clermont-Ferrand, mentioned above.[7] F. Schneider's view that *usura* does not prove the existence of dealings in money at this time is untenable. He thinks that only very small sums were involved, most of them not even coined, but consisting of gold and silver measured by weight. The creditors were large landowners, the debtors small peasants, and the cause war, famine, or legal fines. The use of pledges was regarded more and more as a matter of course, and interest only occurred at the beginning. Later on, according to him, the latter was not practical, and loans in kind took its place.[8] But most of the formulae do not relate to "very small amounts" in raw metal, but to larger sums, for example a pound of silver or a number of shillings.[9] We have also other sources which show clearly that it was not only "very small amounts" which were lent, and that the debtors were not only peasants in dire need, so that no interest other than their own labour was required. Gregory of Tours relates that in 584 two Jews and two Christians came to Tours to collect promissory notes given by a subordinate count (*vicarius*) and a former count. When the four creditors were murdered, it appeared that an official of the royal financial administration had taken part in the crime; and he is also said to have borrowed from the Jews.[10] It is expressly mentioned that "usury" had to be paid.[11] We see therefore that nobles and persons in good positions borrowed money from the Jews and paid interest.

To this must be added the general picture which Gregory of Tours gives of the material circumstances of society in his time. Everywhere there is obviously

[1] *MG.*, Concil., I, 82, c. xxx; see above, 345.
[2] c. 13; ibid., 158.
[3] c. 1; ibid., 197.
[4] *Wirtschaftsentwicklung d. Karolingerzeit*, II², 281.
[5] *VG.*, II, I³, 299, note 1.
[6] Waitz has quoted no fewer than ten formulae, all Merovingian.
[7] See above, 343.
[8] *Neue Theorien über d. kirchl. Zinsverbot.* in *Vierteljahrschr. f. Soz. u. WG.*, V, 299 (1907).
[9] *Form. Andecav.*, 22; *Marculf*, II, 25, 27; *Turon.*, 44; *Senon.*, 3, 24, 48.
[10] *Hist. Franc.*, VII, 23.
[11] Ibid., op. cit., 305.

a large quantity of gold and silver in the possession of private persons. The high figure of the fines mentioned by him again and again (4,000 to 16,000 *solidi*) deserve special notice. Similarly, large sums were paid to acquire bishoprics[1] and worldly offices.[2] Moreover, the yearly presents brought by nobles to the king chiefly consisted of gold and silver.[3] Clearly, the more prosperous classes had large sums of money at their disposal.

The struggle for gain and in particular the greed for pecuniary profit emerges as the most characteristic motive of economic and political activity. Gregory of Tours repeatedly mentions the disgraceful lust for gold,[4] of which the countless individual cases which he cites afford practical examples. A fortune-teller earns gold and silver daily by her activities.[5] A merchant of Tours in the wine trade, on his way home from Orleans with a large sum of money after transacting his business, is actually killed on his journey by his servants who covet the money.[6] A Syrian merchant in Bordeaux in 585 offers 200 gold pieces in order to be allowed to keep the relics which a powerful layman wishes to take from him.[7] Conditions were still much the same in the seventh century. The mayor of the palace, Ebroin, is described as so greedy for gold that only those who brought him more money than the other side obtained justice from him.[8]

The Merovingian system of taxation is another indirect proof that money was in general use at that time. It is true that this matter is still somewhat obscure. The old view that the Germans knew nothing of taxes is also held with regard to the Franks, who are said to have refused to recognize such obligations.[9] F. Dahn attacks this view, basing his arguments, which still command too little consideration, on rich material drawn from the sources,[10] and proves that the Roman system continued in this sphere and was adopted without alteration by the Franks. Not only the land and trade taxes, customs, tolls, and bridge tolls, but also the head-tax were all levied in Gaul after the Frankish conquest; and the old technical terms were still in use (*descriptio*, *polyptycha*, *exactor*, *discutere*, etc.). Taxes were public and legal obligations[11] and a royal prerogative, and were paid in money.[12] They were collected in each Gau[13] and brought in the form of gold pieces to the royal treasury, after they had been refined by the mint-master in a furnace.[12] This process, still kept up in the seventh century, goes back to a *constitutio* of late Roman times; for in 367 the Emperors Valentinian and Valens had decreed that the taxes when collected should be melted then and there, and that the pure gold therefrom should be delivered to the imperial treasury.[14] Taxes were assessed upon the individual *civitates*, the urban districts;

[1] *Hist. Franc.*, vi, 39; viii, 22.
[2] Ibid., viii, 18.
[3] See above, 333.
[4] *Hist. Franc.*, viii, 22; see also sources quoted by Hauck.
[5] Ibid., vii, 44 (585).
[6] Ibid., vii, 46.
[7] Ibid., vii, 31.
[8] Cf. *Vita S. Leudegarii ep. Augustod.*, i, c. 4; *MG. SS. rer. Merov.*, v, 286.
[9] See Germ. edit., ii[2], 526.
[10] "Zum merowingischen Finanzrecht," *German. Abhandl.*, z. 70. *Geburtstag Konr. Maurers*, 1893, 333 ff.
[11] Cf. also Gregory of Tours, *Hist. Franc.*, x, 21.
[12] *Vita S. Eligii*, i, 15; *SS. rer. Merov.*, iv, 681. Cf. also *Vita Austrigisili ep. Biturigi*, ii, 2; ibid., 200.
[13] See the money tribute (*aurum pagense*) mentioned by Brunner, in the Gaus of Le Mans and Tours, which in his view goes back to Roman taxation, *DRG.*, ii, 235, note 11.
[14] *Cod. Theodosian.*, xii, 7, 1, 3; cf. Luschin, *Allgem. Münzkunde*, 82.

all the towns in Gaul were obliged to pay them,[1] as was Church property, unless the king had granted it freedom from taxation by a special *privilegio*.[2] Only the man who paid no land tax was liable to pay head-tax; he was probably one of the smaller people, as was already the case in Roman times, and thus it came about that the liability to head-tax was considered a sign of inferior social position.[3] It did not, however, shut the door to freedom; rather it was freemen who paid taxes, not serfs. We now understand the reluctance of the Franks to pay head-tax; they felt that it lowered them socially.[4] This corrects the view [5] that the free Franks were on principle and in general freed from head-tax. Another example may be quoted in favour of this thesis. The *Vita S. Bibiani ep. Santonensis* relates that under the Gothic King Theodore (fifth century) the citizens of Saintes were unbearably taxed, and points out that the king had designs not only on the possessions of the *mediocres personae* but on those of all the nobles.[6] Probably the *immunitas* conferred not only on the Church but on the nobility [7] carried with it exemption from the usual direct official taxation. This opposition was therefore directed mainly against new extraordinary taxes, which were contrary to established custom.[8] An idea of the extent of money economy is also gained from the fact that other general contributions were made in money, as, for example, Church tithes in the sixth century,[9] and alms for the poor (*matricularii*).[10]

Some confusion of ideas about the system of taxation has been caused in the past by the fact that earlier scholars did not sufficiently distinguish between duties on articles of consumption (*akzise*), chiefly paid in kind, and the public taxes (*census publicus*), paid in money.[11] We can now see that in the sixth century these payments in kind (*tributa*) were sometimes commuted for money payments, as in Clermont-Ferrand.[12] Obviously, payment in money was not only more possible, but more convenient and desirable. In Lower Italy (Lucania and Bruttium) in 533–7 a swine tribute which had to be sent to Rome was changed to a money payment.[13]

It is true that the old theory of the absence of a money economy among the Germans was concerned less with conditions in Gaul and the provinces than with those on the right bank of the Rhine, where lay the real German settlements. The main support of this theory was however based on the fact that in certain of the folk laws a table of values is adopted, according to which *wergeld* could be paid in heads of cattle.[14] To-day, however, it is necessary to proceed more cautiously in our use of these sources, for these valuations in the Ripuarian Law [15]

[1] *SS. rer. Merov.*, iii, 593, c. 38.
[2] Cf. *Vita S. Eligii*, i, 32; op. cit., 4, 688 (Tours); *Vita Nivardi ep. Remens*, c. 10; op. cit., 5, 169.
[3] Dahn, op. cit., 360.
[4] Ibid., 361.
[5] *DRG.*, ii, 234 (1892).
[6] *SS. rer. Merov.*, iii, 96, c. 4.
[7] Cf. Kroell, *l'Immunité franque*, 44 ff. (1910).
[8] See the Edict of Clothar II (614), c. 8; *MG.*, Capit. 1, 22; and the *Vita Sulpicii ep. Bitur. MG. SS. rer. Merov.*, iv, 376.
[9] See the pastoral letter of the bishops of the province of Tours to the people (c. 567). *MG.*, Concil., 1, 138.
[10] Gregory of Tours, *De virtutib. S. Martini*, 1, 31; *MG. SS. rer. Merov.*, 1, 603.
[11] See Waitz, *VG.*, ii, 2[3], 260 f.
[12] Cf. Gregory of Tours, *Vitae patrum*, c. 2; *MG. SS. rer. Merov.*, 1, 669. Even in the time of Charles the Great there was a similar *akzise* in Aquitania. Cf. *Vita Hludowici*, c. 7.
[13] Cf. Cassiodorus, *Var.*, xi, 39. *MG. AA.*, 122, 352 f.; and Reiprich, op. cit., 11.
[14] See *Lex Rib.*, Tit. xxxvi, 11; *Lex. Saxonum*, c. 66; the *Capitul. Saxon.*, c. 11 (797).
[15] Brunner, *RG.*, 1[2], 322, note 60.

are now known to be a later interpolation, and the other two laws belong at earliest to the time of Charles the Great (*c.* 800) and prove nothing for the earlier period. On the contrary these scales of value had obviously become necessary at a time when the old coinage of the Salic Law no longer held good, and confusion might arise owing to the introduction of the new heavier silver *denarius*. Sources for this Carolingian period show that numerous cases of perjury had occurred owing to the double reckoning.[1] At that time also additions were made to the Salic Law which aimed at defining the fines according to their value in *denarii*.[2] Moreover, we are definitely told that certain payments in kind (sword and falcon) are no longer to be taken, in order to avoid similar cases of perjury which might arise owing to the changed prices.[3] The fixing of these scales of value (*Wertaxen*) now appears in a different light. It was necessary because in the Ripuarian Law it was stated to be optional whether payments were made in money or in kind.[4] It was therefore necessary to know what payments in kind were equivalent to a *solidus* in money, or how these were to be valued. Such a need must have been particularly felt in Saxony where two different *solidi* were in circulation.[5] It is important to note that both the passages in question, in the *Lex Ribuaria* and the *Capitulare Saxonum*, are followed by a regulation which lays down that payments could at any time be made in money.[6] The necessary condition for proceeding according to this regulation must have been a sufficient supply and corresponding circulation of money. The assumption that payments were regularly made in kind cannot, therefore, be upheld.

Other phenomena in early Frankish law support this view. The payment of the head-tax by semi-free men was also made in money. This is shown by the form of manumission *per denarium*. The *denarius*, which according to this custom was jerked away from the head of the person to be freed, was the symbol of liability to pay dues, not the price of freedom.[7] A voluntary acceptance of serfdom was symbolized by placing a *denarius* on the head of the person concerned. The decree in the Salic Law concerning the *Reipus* leads to the same conclusion.[8] A man who married a widow had to pay 3 *solidi* and 1 *denarius* in coins of full weight, which must be tested by three men. This *Reipus* had also to be paid if a Lombard married a Salic widow.[9] Finally, there was also betrothal according to Salic law *per solidum et denarium*.[10] Thus early Frankish civil law is interwoven with a symbolism which presupposes the regular use of money in ordinary transactions, and would be quite incomprehensible if a natural economy alone prevailed at that time.

In the richer material yielded by Carolingian sources the optional payments in the folk laws and early Frankish formularies are more clearly explained.[11]

[1] Cf. the information in the decrees of the Council of Rheims (813), c. 41; *MG.*, Concil., ii, 257, and my *Wirtschaftsentwicklung der Karolingerzeit*, ii, 300. [2] See above, 365.

[3] See the *Capitulare* of 818–19, c. 8; *MG.*, Capit. 1, 282. Also Brunner, *RG.*, 1, 322, note 60.

[4] Cf. Tit. lxvii, 1; *MG. LL.*, v, 256.

[5] See my *Wirtschaftsentwicklung der Karolingerzeit*, ii, 332.

[6] *Lex Rib.*, xxxvi, 12. Op. cit., 232; *Capit. Saxon.*, c. 11; ibid., 93. This decree used to be misunderstood, as it was interpreted as contrasting the new silver *solidus* with the old gold one. See my *Wirtschaftsentwicklung der Karolingerzeit*, 2nd edit., 306.

[7] Brunner, *Die Freilassung durch Schatzwurf*, in *Histor. Aufsätze f. Waitz*, 1886, 55 ff., especially 65.

[8] Tit. xliv. Also Brunner, *Sitz.-Ber. d. Berliner Akad.*, 1894, 1289 ff.

[9] Cf. Brunner, *RG.*, 1, 391, note 40.

[10] See Fredegarius' account (iii, 18) of Clovis' betrothal to Clotilda. *MG. SS. rer. Merov.*, ii, 100, and *Form. Sal. Bignon.*, 6; *MG. FF.*, 230.

[11] See the quotations below, 380.

In grants of land to the Church, the holder of the *precarius* is frequently allowed to pay the agreed tribute (to be given in kind or in money) in money if the harvest is bad.[1] This is the same phenomenon that we saw earlier in the much discussed taxes in kind mentioned in the *Lex Ribuaria* and the *Capitulare Saxonum*, from which I conclude that there must have been plenty of money available.[2]

We can now throw a new and important light on the folk laws of the tribes of Inner Germany, especially on those of the Alemanni and Baiuvari. According to the Alemannic Law the *dos legitima* was to be paid *aut in auro aut in argento aut in mancipia aut quale ad dandum* (Tit. lv, 35); this also holds good for the bridal gift.[3] If an *equus emissarius* were injured, after the value had been fixed, half the compensation was to be paid *in auro valente pecuniam*, and the other half in any other money which was obtainable.[4] As here, so also in Tit. xc,[5] it is taken for granted that the goods and chattels of freemen regularly consisted of gold and silver as well as of *mancipia* and cattle. The Bavarian Law fixes a fine of 12 *solidi auro adpreciatos*[6] for aiding and abetting unfree servants of the Church to run away, and 40 *sol. auro adpretiatos*[7] for burning Church property. The meaning of this is seen from another passage where 300 *sol. auro adpretiatos* is fixed for the murder of a priest.[8] Here it is added: *si aurum non habet, donet alia pecunia, mancipia terra vel quicquid habet, usque dum inpleat.* If a bishop is murdered, a garment (*tunica*) of his size is to be made in lead and its weight is to be paid in gold, or failing gold in other goods.[9] Finally, for the murder of strangers (or pilgrims, *peregrini*), a compensation of 100 *sol. auro adpretiatos* was fixed.[10] From 12 *solidi* upwards was looked on as a large sum of money.[11] These decrees are supplemented by those dealing with theft. Here provision is made for thefts of gold, silver, cattle, or other goods,[12] thus even where there is very little property (under 10 *solidi*) it is taken for granted that part of this will always be in gold and silver. Also in the case of a *depositum*, the decree provides for gold and silver ornaments, or other costly articles, which have been given into the charge of someone. If the goods perish through fire, the *depositarius* is responsible, at any rate for the gold and silver, as these cannot burn.[13]

We must, I think, take all these passages together, if we are to form a correct judgment. Earlier scholars have merely picked out a few examples and have concluded that it was not easy to get gold. In actual fact, however, payment in gold and silver is considered as the best and most usual form of discharging obligations. There can therefore have been no lack of these metals, nor any difficulty in procuring them.[14] Trade, purchase and sale, and moneylending were already so extensively developed,[15] that it is impossible to conceive of the non-existence of a money economy. The peculiar nature of the sources has led to misunderstandings. The frequency of sale and purchase and of moneylending cannot be estimated with even approximate correctness, because the proofs which certainly existed at one time, the *Urkunden*, were not preserved but destroyed, on account of their ephemeral nature. Their large number is

[1] See my *Wirtschaftsentwicklung der Karolingerzeit*, 2nd edit., 263 ff.
[2] Ibid., 265 f. See also Germ. edit., ii[3], 529, note 395, and 532.
[3] lvi, 2.
[4] lxx, 2.
[5] *MG. LL.*, iii, 77.
[6] i, 4, op. cit., 271.
[7] i, 6, op. cit., 272.
[8] i, 9; ibid., 274.
[9] i, 10.
[10] iv, 31; ibid., 205.
[11] ix, 3, ibid., 303.
[12] ix, 8, ibid., 304.
[13] xv, 2; op. cit., 318.
[14] See Germ. edit., ii[2], 534
[15] See 356 f.

best illustrated by the great quantity of formularies which have come down to us from this pre-Carolingian period, both for transactions of sale and purchase.[1] That so many models and patterns for these were in use, points to a need which would be quite incomprehensible in a society in which a natural economy was entirely or mainly the rule, and a money economy completely non-existent. In many of them the purchase price is directly fixed in coins or precious metal.

On the other hand, the Church, from whose archives these sources mainly come, must have found it necessary (in consequence of the commercial regulations, and especially the well-known prohibition against alienation of property),[2] to acquire by payment in kind those goods which were usually bought with money; hence the number of barter transactions and *precariae* agreements.[3] According to the Alemannic Law priests and other Church dignitaries could sell or purchase *immobilia* and *mancipia* belonging to the Church only with payments in kind.[4] In this case, therefore, barter does not prove lack of money, nor difficulty in obtaining or circulating it. The aim was rather to avoid any diminution of Church property, and the dangers which might result in matters of sale and purchase from impeachment of these by relatives of the other party. We can test the correctness of this point of view by some practical examples. I have shown [5] how extensive the slave-trade must have been; but in the existing sources we find hardly a trace of it. The same is true of the purchase of ornaments and clothes,[6] and other goods in daily use, especially food.[7]

The explanation of these alternative forms of payment must therefore be sought elsewhere. Apparently they were intended to create free economic mobility. And here our newly-gained information gives us more definite clues. On the one hand, if a social differentiation had already split up the mass of freemen into men of very different degrees of wealth, then here also in fixing fines the productivity of the poorer men would have to be taken into consideration, as in the case of public servants both military [8] and legal.[9] On the other hand, it has been proved that at that time free price-fixing was possible, and that the varying conditions of the market had a definite influence on the prices fixed.[10] Natural produce could therefore be sold at different prices, according to the laws of supply and demand. If payments of fines and taxes could be made in either form, the debtor could profit by the rise or fall of the market. The small freeman, therefore, was not forced by sudden necessity to sell his goods, or even his plot of land, in unfavourable circumstances, in order to acquire large sums in ready money, or to borrow, thereby exposing himself to exploitation by usurers. Thus these alternatives are evidence of social and political solicitude for the small man; our previous description of the legislation of kings and dukes in the German states [11] makes such solicitude no longer seem premature, for it appears very plainly in the folk-laws. This view is also supported by the fact that the lack of precious metals provided for by these regulations can hardly

[1] *MG. FF. Andecav.*, 2, 3, 4, 9, 19, 21, 25, 27; *Marculf.*, ii, 19, 20, 21, 22; *Turon.*, 5, 8, 9, 10, 42; *Senon.*, 2; *Salic. Bignon.*, 3, 4, 5, 20; *Sal. Merkell.*, 9, 10, 11, 12; *Lindenbrog.*, 8, 15; *Visigot.*, 11.
[2] See above, 246.
[3] See my *Wirtschaftsentwicklung der Karolingerzeit*, 2nd edit., 255 ff.
[4] Tit. xx. [5] See above, 232 f. [6] See above, 329.
[7] See what has been said above, 344, concerning the traders who bought up wine and corn in 585.
[8] See above, 218 ff. [9] See above, 221 ff.
[10] See above, 355 ff. [11] See above, 216 ff.

have occurred among the wealthy or the noble, after what we have learnt of the quantity of ornaments and costly articles possessed even by the laity[1]: it was only among the poorer freemen that scarcity existed. It is no longer possible to believe that there was any difficulty in procuring money at that time. If there had been, the great number of Merovingian mints in the West would be inexplicable. In the East, however, gold flowed from Byzantium not only to Scandinavia,[2] but also to Germany, including Bavaria (the Danube trade).[3] One more case in point may be cited. In 537–8 the eastern taxpayers in Istria were allowed, when there were good harvests,[4] to pay their public dues in kind (wine, oil, corn). Obviously, this surplus caused a lack of demand, with the result that the natural products could not be changed, as at other times, into gold.[5] This example is the companion picture to the account which I have given above. We have also most instructive cases in the fifteenth and sixteenth centuries which deserve to be noted in this connection. The great landlords of the time allowed the peasants of the Tyrol, as a special favour, to pay dues in money instead of kind.[6] Money had depreciated, and the price of natural products had risen considerably.

And now a word in conclusion on the position as regards the German language. The fact that the Goth Ulfilas, in his translation of the Bible, rendered *pecunia* as *faihu* has been taken as an unmistakable proof of the existence of a natural economy.[7] Actually, no such conclusion is warranted; for in old High German *fihu*, like *pecunia*, has the double meaning of property and money.[8] Ulfilas was therefore right in using the term *faihu*, since this did not by any means denote merely cattle (= money). The word *Schatz* (treasure), which in the Frisian language means cattle, is similarly complicated. Here also we have the double meaning of cattle and money. Kluge has already pointed out that the original meaning of cattle cannot be proved, for the ancient German *skatta* = money, coin.[9] E. Schröder recently showed that this word usually implied coined money, especially in Ulfilas' translation of the Bible.[10] He has also proved that the form of the word *schilling* is due to the use of the earliest imported gold coins as pendant ornaments, small shields worn on the breast.[11] *Schilling* originally meant a coin used as an ornament, and later gave its name to a coin, the (gold) *solidus*. Finally, *pfennig* appears at the end of the Merovingian period as the German term for the *denarius* and then takes the place of *schatz*.[12] Thus all earlier words for money refer to coined money[13] and show that the

[1] See above, 332 ff.
[2] See above, 367.
[3] See my *Wirtschaftsentwicklung der Karolingerzeit*, ii², 335, and also R. Schröder, *DRG.*, 1⁶, 202, note 27.
[4] Cassiodorus, *Var.*, xii, 22. *MG. AA.*, xii, 378.
[5] Ibid.
[6] Cf. *Österr. Weisthümer* (*Akadem. Ausgabe*), iii, 2, 74, line 42 ff., and iv, 2, 754, line 36 ff.
[7] For references, see Germ. edit., ii², 538, note 347.
[8] Müllenhoff, *Duetsche Altertumskunde*, iv, 157; F. Kluge, *Etymolog. Wörterb. d. deutschen Sprache*, Art. "Geld"; and E. Schröder, "Studien z. d. deutschen Münznamen," *Zeitschr. f. vergleichende Sprachforschung*, xlviii, 273 (1918).
[9] Op. cit., Art. "Schatz", and also Müllenhof, op. cit.
[10] Op. cit., 266 f., 271.
[11] Ibid., 264.
[12] Schröder, op. cit., 250.
[13] Schröder (op. cit., 141 ff.) derives *Scherf* from Lat. *scripulus*. Here the connection with Roman coinage is clear.

Germans were conversant with its use from the earliest times. The fundamental meaning of the word *Geld* itself, however, goes back to the barter economy. It is the *Vergeltung*, the paying back, which is implied here.[1] Thus the results of recent philological research complete the statements made above, and prove their correctness, as against the earlier theory of an omnipresent natural economy.

[1] Cf. F. Kluge, art. "Geld", op. cit.

Chapter XIII

RETROSPECT AND CONCLUSION

THE general picture drawn in this book of the social and economic development of the pre-Carolingian period, from the age of the folk migrations onwards, differs considerably from that which has usually been given. The conventional picture was one of backward and very primitive conditions. But this is completely at variance with the conditions which were known (even before the great achievements of modern epigraphical and papyrological research) to have prevailed in late Roman times, and in equally strong contrast with what the Germans actually achieved later, in the course of their settlement in the Roman provinces. If the people had been so backward at this time, how could the great task of land division have been carried out by Ostrogoths and Visigoths, Lombards, and Burgundians, as it is described? The Germans would have been utterly incapable of maintaining in the same state of cultivation the wide acreage which had already been methodically and intensively tilled by the Romans; and had they depended on the latter to do the work their position would soon have deteriorated, to a degree which would have brought them into economic subjection to their Roman *consortes*.

Similarly, there was no necessity to win new territory for cultivation by a slow and laborious process of reclamation, nor to seek ground in the forests for a purely primitive husbandry. Quite apart from the wide extent of unforested land, the existence of which is established by modern geographical research, and on which evidence of prehistoric settlements of husbandmen has been discovered, the division of land with the Romans must have provided a rich supply of arable. Even where no regular division took place, the Germans acquired land which had long been under cultivation. And yet another consideration: in those places in which the Germans took two-thirds of the Roman arable, they took only half of the forest clearings and newly reclaimed land. Does not this tell clearly both against the theory of the predominance of forest economy and against the idea that the cultivated sites changed from place to place, or even (truly a bold conception!) moved about the forests? Moreover, any such view would be in direct conflict with the motive usually assigned to the so-called folk migrations. Was not one of their chief causes supposed to be the land hunger of the Germans? And how could land and forests have been exploited in this "extensive" fashion, if land were so scarce that the Roman authorities had had to give the barbarians definite areas for settlement? In any case the adoption of such procedure would have been impossible, in view of the devastating results which would have accompanied it from the point of view of agricultural technique. It is only necessary to recall the case of Bavaria, where districts which to-day are moorland and useless for crops, must have been under cultivation in the Celtic and Roman period, as the surviving *Hochäcker* and Roman remains prove. The change may be traced to an irrational method of reclamation, which brought about a diminished rainfall and consequently

the desiccation of the soil and the disappearance of the fertilizing layer of vegetation, as a result of which arable cultivation was no longer possible in that district.

Similar reasons may be urged against the Mark-association theory. It is most unlikely that the German occupation was accompanied by a rationalization of land holdings which had originally been divided into private properties under the Romans. It would have been an enormous undertaking to bring together all these holdings into anything like a uniform whole. Archæological research has shown that the best known "Marks" were on the sites of early pre-Roman settlements.

The extension of cultivation had gone much farther than used to be supposed. Some recent scholars go so far as to consider that it was practically complete before Carolingian times in North-West Germany and in Bavaria, not to mention the districts of Roman settlement, and that all that took place later was an intensive internal colonization, in which a substantial beginning had already been made.

It used to be thought that the main characteristic of this early period was the fact that it was a "closed economy", in which men lived and worked in almost complete isolation, in separate self-sufficing units. On the contrary, however, it has become clear that already in Roman times the scattered plots of land belonging to a number of landowners were interspersed, even in small areas, and in single villages.

The highly developed network of roads and ways of communication, created by the Romans in the first centuries of the Christian era as far as, and in places even beyond, the *limes*, for military, commercial, and political reasons, was not destroyed; it was there to offer on all sides safe means of communication in early German times. We have seen that in the latter period new undertakings, such as the great colonization movement, were not only connected with the Roman settlements and proceeded from them, but actually advanced along the old Roman roads. The great migratory period brought the peoples closer to one another and did away with isolation. Recent research into the history of art has impressively developed this thesis by means of remains of industrial *objets d'art*, and the spread of late Roman technique.

The political expansion of Frankish rule, which was extended by King Theudebert in the first half of the sixth century to Pannonia and to the Adriatic, and in the North as far as the Saxons and Thuringians, first pointed a way out of the narrow limits of early tribal life, and must have banished the seclusion of former times. To this we must add the spread of Christianity and especially of Catholicism. As its name implies, it tends to cast a wide net and aims at distant results. In this period of early German culture, it was not only in religious life that its peculiarly international tendencies were at work; it had also a levelling and socialistic effect on material existence and on the law. It bridged over the special features of the various political institutions, and created over their heads a self-contained series of interests and efforts which were everywhere the same.

But what about the small individual farms? Were they not isolated? Scholars were led astray in this matter by the old interpretation of the *Hufe*, and still more perhaps by the descriptions of the social bases of German political life in that early age. If the German land occupation were imagined as taking place by means of settlements of free men with equal rights on a family basis, and if the single *Hufe* were the measure of private ownership, which fell equally

to the lot of everyone, then it was easy to reach such a conclusion, in the light of Tacitus' description of the freedom of the Germans and of their characteristic tendency to isolated settlements. Have not certain scholars tried to make out that the *Einzelhof* in forest and uncultivated land was actually the original form of German settlement? But the single *Hufe* was certainly insufficient to maintain a freeman and his family. The truth, as shown by the records, is that free farmers possessed not one *Hufe* but several. We must not confuse the unit of measurement with the individual holding, nor imagine that the latter was always the same. No serious scholar to-day would support the old theory; it was born of eighteenth and nineteenth-century ideas concerning the freedom and equality of the Germans at the time of the occupation. It is certain not only that there were everywhere considerable inequalities of ownership, but that great estates existed from the beginning. But the Germans, under the influence of their characteristic law and social institutions (the *comitatus*), introduced important changes which sowed the seed of a vigorous new growth. And although we must assume a considerable measure of adoption of Roman institutions, the extraordinarily important part played by the Germans in the cultural development of the whole succeeding period consists in this, that after the conquest of the Roman Empire and the foundation of their new states on its soil, they were in a position to take over the Roman culture without further ado, to keep it alive and indeed to infuse new life into it; and that, as we learn from the fifth century Roman writer of Marseilles, they instituted better conditions of life, which actually influenced and attracted those in possession of the older Roman culture in favour of the barbarians.

The Germans did not behave as enemies of culture, destroying or abolishing Roman civilization; on the contrary they preserved and developed it. Even if they were at first rough and clumsy in their use of the Roman methods, there was no interruption or breach of cultural development, which might have compelled them, owing to their primitive incompetence, to build up a completely new edifice. The conquest of the Roman Empire took place on different lines from the conquest of other states in political history. The Germans did not overrun and destroy it in a savage onslaught, and then painfully build their primitive culture on its ruins. The Roman world was won by the Germans gradually from within, by a peaceful penetration which went on for centuries, during which they absorbed its culture and even, to a considerable extent, took over its administration. Thus the abolition of its political sway was only the last consequence of a long process of change, the readjustment (so to speak) of a firm, whose old name has for long ceased to describe the actual head of the business. The Gothic King Athaulf could boast with truth that he had not destroyed Roman civilization, but had restored and magnified the fame of Rome by means of German strength. It is for this reason that the abolition of the western Roman Empire in 476 was not felt by contemporaries to be the fall of Rome, and indeed was hardly considered to be a really important event. "The Roman Empire in the West fell asleep without any convulsion."

The attitude of the Germans to Roman organizations, as conquerors after the fall of Roman rule, was conservative in their own interests, and they continued to develop their rich inheritance. But it was not as if this inheritance had stayed unchanged, to serve as a pattern for the new structure; the Roman world was dissolving, and a process of disintegration, both economic and social, was

taking place. The new rulers first of all determined the political organization. Even during the migrations the old tribal existence had changed considerably and had been forced into a unity, which was crystallized in the tribal constitution after the final settlements. Side by side with this, encouraged by the wars against the Romans, went the concentration of political power in the tribal kingship. The institution of monarchy emerged out of the military importance of the old German army leadership and dukedom, and a monarchical form of constitution was introduced after the final settlements. As a consequence there came about a change in the traditional democratic institutions. The authority which had formerly been vested in the people, in the assembly of common freemen, passed to the monarch; and the new system was decisively influenced by him. The control of the rural organizations (*pagi*, *civitates*), taken from Celts and Romans, was subject to royal authority and entrusted to royal officials (counts). A similar change occurred in the towns. Military authority was at first still in the foreground. Civil administration was then joined to it, and the old Roman communal autonomy, expressed in the municipal constitution, was replaced by a seigneurial organization. The heavy social and economic oppression of late Roman times, due to the peculiar fact that the fiscal interests of the state coincided with those of the great private landlords, who farmed the taxes, was done away with, and a political solicitude for the welfare of the mass of the free population was substituted. It was regulated by consideration of their public services (army and justice) and aimed at protecting the poorer men. For the unequal distribution of land in these new German states had already caused an economic differentiation, which brought with it a change in social status. Side by side with the ancient German nobility, the service of the king came also to mean ennoblement, while the acquisition of large estates divided the mass of freemen into different classes.

The upward movement of the lower classes (semi-free and unfree) was strongly encouraged by the Church, which, because of its philanthropic duties (care for the poor, manumission of slaves, etc.) attracted these strata of society to itself. Its administration, which had developed in a monarchical direction through the power given to the episcopate, met with the same tendency in the kingship, especially among the Franks. With the conversion of Clovis to Catholicism, a step prompted by internal politics, it placed itself under the protection of the monarchy, and, in its own interests, co-operated in developing the centralization of the royal power. This co-operation led not only to a rich economic endowment of the increasing number of ecclesiastical institutions, both bishoprics and monasteries, but also to the development of the political power of the episcopate, when the royal power declined, owing to the partition of the Frankish kingdom and the long civil wars. The secular and religious aristocracy, enriched by royal service and from royal property, was, as the Edict of Clothar II shows, more and more influential in feudalizing public authority, a process which went on side by side with the development of the great landlords (*potentes*). The development of the system of private churches (*Eigenkirchen*), which, like the great estates, derived from the Roman inheritance, is the economic side of this development, and typifies the great offensive campaign begun by the lay aristocracy in the seventh century against the rich property of the Church.

The subordination of the Frankish state Church to the authority of the crown, which made it a national church in opposition to the Roman Papacy, is not to be

understood as an acceptance of Aryan tendencies, for the *Eigenkirchenrecht* does not seem to have been either denominational or national. Roman influences were doubtless encouraged by the Church; but it is not true that by its adherence to Roman law it reintroduced Roman culture to the Germans and familiarized them with it. The fact that the Merovingian national church was "free of Rome", and that the lay aristocracy came more and more to control and to disintegrate it, would certainly have tended rather to check such Romanization in the seventh and the beginning of the eighth centuries. The influence of the Roman Pope did not become important until after the great reform of the church, which took place under the first Carolingians. Here the co-operation of the new cultural factors is very plain, for though German civil law might be lastingly influenced by the Church in such institutions as the right of free division of property, freedom of testamentary disposal, and freedom of marriage, yet its German institutions, such as patronage and *mundium*, suited it well. Roman law did not always have the upper hand.

The subordination of the Church to the protection of the Frankish king and its rich endowments in land made it possible for the royal ruler to use ecclesiastical property for state purposes. As the lay lords had been doing on a small scale by virtue of their *patrocinium*, so now the King claimed Church property on a large scale and bestowed it on his followers and vassals; and thereby not only were the latter rendered capable of royal, especially military, service, but also this vast accumulation of Church lands became again economically useful to the laity. The rise of the beneficial system, beginning in the sixth century, was not decisively influenced by the Roman model, or by the ecclesiastical *beneficia*. As in other directions, formations of a similar type already existed in late Roman times, and parallel developments may also be observed in the East Roman Empire. Yet the beneficial system of the early Middle Ages emerged as an original and peculiar formation through the combination of the two new cultural factors, German civilization and the Church. It was aided by the internal political development of the Frankish kingdom from the middle of the sixth century, and was connected with the social and economic changes of the time, in the shape of the great estates. Charles Martel did not create the beneficial system, nor was there any reform of military organization at that period. The connection between *vassallitium* and *beneficia* was there from the beginning, and had its counterpart in the German right of maintaining a *comitatus*. Over and above its military purpose, the economic aims of the *beneficium* now for the first time became important.

The civilization of this pre-Carolingian period was not exclusively agrarian and non-urban. The Roman towns did not perish in the storms of the migrations, nor did the new German owners entirely avoid settling in them. In Italy, Spain, and Gaul they remained the administrative centres of the surrounding territory, and were of great economic importance as markets for trade and for the development of a free industry. Industry did not completely collapse or pass entirely into the hands of the omnipotent lords of the great estates, but only received a new character under the Germans. Here as in the country, in the place of the old autonomous administration by the community, there was some measure of control by the town itself, embodied in the city count (*Stadtgraf*) appointed by the king. Side by side with him the bishop rose to great power; after the collapse of Roman rule the episcopate had increasingly become the mainstay

of the provincial Christian population, and in consequence of the wealth which it had acquired by gifts, it was a great economic force. Nor was it only a power among the proletarian masses, by reason of its care of the poor. On the foundation of the privileged position which it had obtained in the Roman period, a position which the new German conquerors acknowledged by means of royal privileges (immunities, freedom from taxation, and military service), its power incessantly grew until it came to vie with that of the count.

Roman urban life radiated its influence from the territory of the old *limes*, the Rhine, Main, and Danube, outwards over the Inner German lands. Even though such towns did not yet exist there, the seeds of urban development were already present, for the quasi-urban centres of the old folk- and Gau-communities (*vici*) were the centres of administration and of economic intercourse, with their markets, customs-houses, and mints, and also, often, of religious worship, with their Gau-temples. Like the folk-strongholds (*Volksburgen*) and strongholds of refuge (*Fluchtburgen*) and like the towns themselves, they were also places of shelter for the country folk in times of invasion, and were walled during the migrations. With their development into towns, the old tribal *territorium* became urban; the characteristic expression of this fact is seen in the transference of the tribal name to the town. After the conversion to Christianity these often populous places became very important, as sees of the newly founded bishoprics.

Above all, however, they fulfilled an important economic function. After the enormous eastward and northward expansion of Frankish territory, which under King Theudebert (534–548) reached Pannonia, the Adriatic, and Jutland, not only did the tribes of Inner Germany become linked up with the old lands, which were soaked in Roman culture, but also the new political relationships soon created economic relationships, accompanied by a revival of trade and commerce. Austrasia comes into the foreground. The new annexations of Frisians and Saxons in the North, and of Thuringians and Baiuvari in the East, strengthen the German characteristics of the large and growing state; and a mixed culture comes into being, which derives a special stimulus from the formation of new relationships on the advancing northern, eastern, and southern boundaries, and new cultural tendencies appear from the North (Anglo-Saxons), from the eastern empire, and from Italy. Trade was by no means unimportant and undeveloped. It was not limited to luxuries and overseas products, such as spices and silk, brought by foreign merchants to central Europe. Orientals, Syrians, and Jews, and the maritime tribes, Frisians and Saxons, were not the only enterprising traders; so also were the Inner German tribes, Franks, Alemanni, and Baiuvari. There was already a class of professional merchants, who acted as middlemen between the original producers and the great mass of consumers, and harvested a rich profit thereby. The great estates did not take the lead here, any more than they did in industry. They did not provide for all their own needs in a closed domestic economy, but bought even ordinary necessaries in the market. Since in the more populous places, especially in the towns, a sufficient number of consumers was already present, a free industrial system was able to develop side by side with the manorial handicraft system, and this often employed wage labour. To this system we owe the artistic products of the gold, silver, and ivory industries of that time.

Commerce and trade were now able to develop into independent professions, because a freely working price mechanism made it possible to make high

profits, and a brisk turnover secured sufficient gain even for the small retailer. Merchants were rich citizens, not only in Italy, where they were classed according to their wealth and might even perform military service in full armour, with sword and coat of mail, but also in the Frankish kingdom. This commercial intercourse was carried on not merely by barter but also with money, and the formularies show us that cash was frequently used in buying and selling. Even before the fall of the Roman Empire the Germans were familiar with the use of money; large sums were paid to them by Rome and Byzantium, so that from the fourth century it was necessary to make regulations to check the flow of gold and silver to the barbarians. In the newly founded German states, both for political and economic reasons coins were at first minted after the pattern of the coinage of the Eastern empire. As trade and commerce continued to develop even during King Theudebert's policy of expansion, a coinage of their own was minted by the German states. There was a double standard, which led in the seventh century to an issue of heavy silver *denarii* (12 = the old gold shilling = 40 lighter *denarii*), with the aim of removing the abuses which had arisen from this fact.

Like trade, the practice of moneylending was also widespread, so that not only professional merchants but also clergy were engaged in it. Even in the sixth and seventh centuries a great lust for gain had seized upon wide circles of the population; above all, the Jews, many of whom also farmed the mints, became rich through usury, a fact which led to their persecution, especially in Spain. The taxes in kind of agricultural produce mentioned in the folk-laws are no sign that a natural economy predominated; the alternative payments aimed rather at making more favourable conditions of payment for the poorer freemen and allowing them to profit by the state of the market.

Thus, this period of the fifth and sixth centuries is seen to be the organic and vital connecting link between late Roman and Carolingian times, and the so-called "Carolingian Renaissance" appears in a somewhat different light. Much which once seemed to be a new and deliberate creation is now seen, owing to our clearer knowledge of the period, never to have been lost at all, but to have persisted in those obscure, sparsely documented and twilight centuries of European cultural development. The later centuries did but complete and extend what had already been introduced and established in that earlier age.

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